United States Court of Appeals
for the Second Circuit

JOINT APPENDIX

ORIGINAL

77-6080

UNITED STATES COURT OF APPEALS
FILED
JUN 1 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,
Plaintiff-Respondent,

against

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY,
Defendants-Respondents,

and

AVIS, INC.,
Defendant-Respondent-Intervenor.

ON APPEAL FROM AN ORDER OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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ASSIGNED TO JUDGE BLUMENFELD
FOR ALL PURPOSES

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CIVIL DOCKET
NITED STATES DISTRICT COURT

DOCKET
1a

Jur[illegible] date:

Form No. 106 Rev.

TITLE OF CASE

UNITED STATES OF AMERICA

VS

INTERNATIONAL TELEPHONE AND
TELEGRAPH CORPORATION and THE
HARTFORD FIRE INSURANCE COMPANY
AVIS, INC. - Intervenor

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[illegible]rtford, [illegible]

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* Admitted 3/6/75

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STATISTICAL RECORD	COSTS		
5 mailed	Clerk		
6 mailed	Marshal		
~~Antitrust Suit.~~	Docket fee		
is of Action: Action to join defendants from olating Section 7 of Clayton Act, as ~~[illegible]~~ amended. 5 U.S.C. §18)	Witness fees		
	Depositions		

DATE 1972	NAME OR RECEIPT NO.	REC.		DISB.	
11/6	Public Citizen, Inc. Litigation Group (Alan Morrison) Esq.	5	00		
11/7	Deposit:				
"	C.F.100369			5	00

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DATE 1969	PROCEEDINGS	Date Ord. Judgment
8/1	Complaint filed. Summons issued and together with copies of same and of complaint, handed to the Marshal for service.	
8/11	Appearance of Ralph C. Dixon of Day, Berry & Howard entered for the defendants.	
8/15	Marshal's Return Showing Service on I.T.T. Corp. filed. - Summons & complaint.	
"	Marshal's Return Showing Service on Hartford Fire Ins. Co., filed. -Summons & complaint.	
8/15	Stipulation filed that the following schedule for the preliminary injunction proceedings be followed: Plaintiff will file its motion and supporting papers on August 20; defendant will file its papers on September 10; Plaintiff will file its reply papers on September 17; and the hearing will begin on a date following conclusion of Grinnell hearing. So Ordered. Timbers, J. M-8/18/69 Copies mailed Attys Coyle, Sailer and Dixon; copy handed U.S. Atty.	
8/21	Motion for Preliminary Injunction, Notice of Motion, Memorandum in Support of Motion and Original and Copy of Government's Exhibits GX-1 thru GX-44 and GX-45 thru GX-118 (Two Volumes), filed. together with certificate of service of above documents.	
8/22	Stipulation for Enlargement of Time of the defendants to move, answer, or otherwise plead to and including September 10, 1969, filed. So ordered: Time extended to 9/10/69. Timbers, J. Stipulation endorsed as follows: "8/21/69 I assume that this extension does not affect the hearing schedule heretofore ordered. WHT, 8/21/69" Copies mailed Coyle, U. S. Attorney, Atty. Dixon and Atty. Sailer.	
9/10	Answer, filed by Defendant The Hartford Fire Ins. Co.	
"	Memorandum of Defendant Hartford Fire Insurance Co. Opposing Motion for Preliminary Injunction, filed.	
9/11	Prehearing Memorandum of International Telephone and Telegraph Corporation in Opposition to Plaintiff's Motion for Preliminary Injunction, filed.	
9/12	Appearance of Richard M. Reynolds, entered for defendants.	
9/17	Reply Memorandum of the United States of America, filed.	
9/17	Additional Government Exhibits GX-119 thru GX-134, filed.	
9/18	Additional Government Exhibit GX-135, filed.	
9/18	Hearing on Plaintiff's Motion for Preliminary Injunction. Upon Motion of Asst. U.S. Attorney Daniel Sagarin, Attys James J. Coyle, William H. Rowe, Richard M. Clinton, Bruce A. Posnak and Seymour Dussman are admitted for the purpose of this case only. Upon motion of Ralph C. Dixon, Attys John H. Schafer, III, Henry P. Sailer and Charles Buffon are admitted for the purpose of this case only - representing I.T.&T. Defendants exhibits DX8, DX32 and DX69 filed. Absent objection Defendants exhibits 1 thru 69 are received as full exhibits for the purpose of preliminary injunction hearing. Absent objection Government exhibits 1 thru 28, 35 thru 135 are received as full exhibits. Gov't. witness: Dr. William Muller of Madison, Wisconsin is sworn and testified. Gov't witness Harold Lacroix of West Hartford, Conn. is sworn and testified. Gov't. witness Dr. Herbert Deneberg of Philadelphia, Pa. is sworn and testified. 4:24 P.M. Government rests. Court adjourned at 4:25 to resume in this case at 10:00 A.M., Sept. 19, 1969. Timbers, J. M-9/19/69	
9/19	Continued hearing on Plaintiff's Motion for Preliminary Injunction. Defendant's witness Alvin E. Friedman of New York, N.Y. is sworn and testified. Continued examination of witness Friedman.	
10/30	**Placed on Trial List** (Cont'd.)	

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C. 110 Rev. Civil Docket Continuation

UNITED STATES OF AMERICA v. INTERNATIONAL TELEPHONE AND TELEGRAPH CORP., et al

DATE 1969	PROCEEDINGS	Date Ord Judgment
	Defendant's witness Roby Harrington, Jr. of New York, N. Y. is sworn and testified. Defendant's witness Philo Smith of Stamford, Conn. is sworn and testified. Defendant's witness Herbert P. Schoen of West Hartford, Conn. is sworn and testified. Court adjourned at 5:00 P.M., until 10:00 A.M., Sept. 22, 1969. Timbers, J. M-9/22/69	
9/22	Continued hearing on Plaintiff's Motion for Preliminary Injunction. Defendants' witness H. Clay Johnson, of Rye, N.Y. sworn and testified. Defendants' witness Harold Geneen of New York, N.Y. is sworn and testified. Defendants' Exhibits DX70, DX71 and DX72, filed. Defendants Rest at 3:59 P.M. Government's Rebuttal Case. Government's Exhibit 136 Filed. Government rests in rebuttal at 4:01 P.M. Court adjourned in this case to 10:00 A.M., September 23, 1969. Timbers, J. M-9/23/69 at 4:10 P.M.	
9/23	Court Reporter's notes of proceedings held on Sept. 19th, 22nd, and 23rd, 1969, filed. (Cunningham, Reporter)	
9/23	Continued Hearing on Plaintiff's Motion for Preliminary Injunction. Oral arguments: Gov't. opens 10:48 - 11:27 (James J. Coyle; Def. I.T.&T.: 11:27 - 12:00 (John H. Schafer) and 12:16 - 12:31; Def. Htfd. Fire Ins. Co.: 12:31 - 12:44 (Ralph C. Dixon); Closing Argument by Gov't. 12:44 - 12:57. Findings of Fact & Conclusions of Law to be filed as follows by Stipulation of all parties: 13319 Civil : October 1, 1969; 13320 Civil: October 7, 1969. Decision Reserved on both cases. *Upon motion of Ralph C. Dixon John C. Brittain, Jr. is admitted to the Bar of this Court. Court adjourned at 1:05 P.M. Timbers, J. M-9/24/69 (*Special Admission - attorney not involved in this case)	
9/30	Answer, filed by I.T. & T.	
10/7	Proposed Findings of Fact and Conclusions of Law of Defendants IT&T and The Hartford Fire Insurance Company, filed.	
10/7	Proposed Findings of Fact and Conclusions of Law Submitted by the Government, filed.	
10/21	Memorandum of Decision After Evidentiary Hearing On Motion For Preliminary Injunction, filed. Motion Denied. Court will enter appropriate "hold separate order" to preserve the status quo pending trial and decision on the merits. (Opinion constitutes findings of fact and conclusions of law pursuant to F.R.C.P. 52(a).) Timbers, J. m-10/22/69. Copies handed and/or mailed to the following: Attys. Coyle, Dixon and Sailer. Copy handed U.S. Atty.	
10/30	Order on Government's Motion for Preliminary Injunction, entered. Ordered that plaintiff's motion for a preliminary injunction to enjoin the acquisition by ITT of Hartford is denied. See conditions of Order pending final determination of this action. Timbers, J. Copies mailed to all counsel. [illegible]	
11/3	Notice of Taking Deposition of John J. Navin, on November 17, 1969, at the Antitrust Div. Field Office, Room 3630, 26 Federal Plaza, New York, N. Y. 10007, filed by Plaintiff. Certified copy mailed to Attorney James J. Coyle, Dept. of Justice	
11/7	Court Reporter's Notes of Proceedings of October 24, 1969, filed. Russell, R.	
12/1	Pre-Trial Conference in Courtroom. The Court enters an order authorizing the Clerk of this Court to issue trial subpoenas for persons anywhere in the United States (pursuant to Anti Trust Statutes). For appearances see Transcript. Timbers, J. M-12/2/69	
12/11	Transcript of Further Pre-Trial Conference held on	

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DATE 1969	PROCEEDINGS	Date Judgm
	December 1, 1969, at 2:00 P.M., filed. Phelps, R.	
12/11	Memorandum from Judge Timbers mailed to counsel acknowledging receipt of letters from counsel and notifying counsel of delay in entering pre-trial order.	
12/15	Motion for Production of Documents pursuant to Rule 34 F.R.C.P. and Notice of Motion, filed by Plaintiff.	
12/16	Court Reporter's Transcripts (4) of Hearings held on September 18,19,22 and 23, 1969, on Motion for Preliminary Injunction, filed. Phelps, R.	
12/22	Court Reporter's Transcript entitled "Pre-Trial Order - Hon. William H. Timbers, Chief Judge, orally (at conclusion of Further Pre-Trial Conference Held in Chambers on December 17, 1969 at 10:30 A.M.)", filed. Ordered that trial of the Grinnell case proceed first, and specifically in advance of trial of the Hartford case. Grinnell case will commence on May 25, 1970, and trial of Hartford case in no event will commence earlier than the "autumn". Government's interrogatories, motion for production and request for admissions to be served and filed by January 30, 1970; Government to complete the taking of its depositions by March 31, 1970; Defendants' motions for production of documents, interrogatories and requests for admissions to be served and filed by April 6, 1970; defendants' depositions to be completed by May 12, 1970; Final pre-trial conference at New Haven at 10:00 A.M. on May 15, 1970; Trial of Grinnell case to commence before Judge Timbers at New Haven at 10:00 A.M. on May 25, 1970. Any exceptions to this Order are to be communicated to the Court by December 30, 1969. Absent any exceptions, the Court will assume this order to be final. Timbers, J. H-12/23/69 Copies of transcript mailed to Attys Widmar, Sailer, McKinney, McInerney, Dixon, Coyle, Alcorn; copy handed U.S. Atty at New Haven.	
12/24	Government's Answers to ITT's Interrogatories dated December 5, 1969, filed.	
12/31	Stipulation filed that the time for ITT to apply for an order to compel plaintiff to more fully answer ITT's interrogatories dated December 5, 1969, than provided in the plaintiff's answers served on December 20, 1969, shall be extended until 15 days after the Court has directed that discovery may recommence.	
1970 1/2	Order entered approving above stipulation filed December 31, 1969. Timbers, J. H-1/2/70 Copies mailed to all counsel.	
3/30	Transcript of Further Pre-Trial Conference Held in Chambers on March 12, 1970, at 9 A.M., filed. (Phelps, R.) Pre-Trial Order of December 17, 1969, modified by agreement of counsel. Among other revisions, Final Pre-Trial Conference to be held at Bridgeport on September 1, 1970, at 10:00 A.M. Trial of Grinnell Case to Commence before Judge Timbers at Bridgeport at 10:00 A.M., on September 15, 1970.	
7/6	~~Court Reporter's Transcript of Proceedings of June 22, 1970, of Pre-Trial Conference, filed. (Phelps, R.) Scheduled revised timetable for Discovery in the Hartford Fire case incorporated therein. Final pre-Trial conference scheduled for March 30, 1971.* Trial of the Hartford case to commence before Judge Timbers at whatever seat of court is subsequently ordered. Timbers, J. Copies furnished by Mr.~~ Phelps to Attorney Widmar of Anti-Trust and Attorney Sailer. (*April 19,	
8/11	Plaintiff's Interrogatories to Defendant, Hartford Fire Insurance	

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D. C. 110 Rev. Civil Docket Continuation U.S.A. vs. INT'L TELEPHONE & TELEGRAPH CORP., et al

DATE	PROCEEDINGS	Date Or Judgmen
1970		
3/11	Plaintiff's Request for Production of Documents by Defendant, the Hartford Fire Insurance Company, filed.	
9/1	Plaintiff's Interrogatories to Defendant, The Hartford Fire Insurance Company, filed.	
"	Plaintiff's Request for Production of Documents by Defendant, The Hartford Fire Insurance Company, filed.	
"	Plaintiff's Interrogatories to Defendant, International Telephone and Telegraph Corporation, filed.	
"	Plaintiff's Request for Production of Documents by Defendant, International Telephone and Telegraph Corporation, filed.	
10/23	Notice to take Deposition of the Hertz Corporation on 11/5/70, filed by Plaintiff.	
10/26	Notice to take Deposition of Wesley H. Loomis III, on 11/13/70, filed by Plaintiff. (in Chicago)	
"	Notice to take Deposition of Leslie H. Warner on 11/13/70, filed by Plaintiff. (in New York City)	
"	Notice to take Deposition of Budget Rent-A-Car Corporation of America, on 11/13/70, filed by Plaintiff. (in Chicago)	
10/29	Notice to take Deposition of Raymond H. Deck on 11/20/70, filed by Plaintiff.	
10/30	Notice to take deposition of National Car Rental System, Inc., on 11/17/70 in Minneapolis, filed by plaintiff.	
11/3	Notice to take deposition of Herbert D. Doan, President of Dow Chemical Company, on 11/17/70 in Michigan, filed by plaintiff.	
11/9	Stipulation re Amendments to the Complaint and Answers, filed. (For exact amendments see stipulation.) So Ordered. Timbers, J. M-11/9/70. Copies mailed counsel.	
11/23	Pre-Trial Order, entered. Ordered that "Not later than 11/25/70 at 4 P.M. defendants will serve and file at Bridgeport seat any formal objections to the Government's interrogatories, motion for production and request for admissions, together with any supporting briefs or written statements of the defendants' position. On 11/27/70 at 10:30 at Bridgeport a hearing will be held upon the objections. The Governments written response to such objections is to be served and filed not later than the beginning of the hearing on 11/27/70. Revised Timetable established. Final pre-trial conference on 8/16/71 and Trial to begin on 9/15/71 at Bridgeport." So Ordered. Timbers, J. M-11/23/70. Copies mailed counsel.	
"	Notice to take Deposition of Gilbert M. Sawyer in Hartford, filed by Plaintiff.	
12/2	Notice to take Deposition of Glen Evins, Lykes Brothers Insurance Agency, on 12/21/70, filed by Plaintiff.	
12/4	Motion of Attorneys Ralph C. Dixon and Richard M. Reynolds to Withdraw Appearance as attorneys of record for International Telephone and Telegraph Corp., filed.	
"	Plaintiff's Request for Production of Documents by Defendant, International Telephone and Telegraph Corporation, filed.	
12/14	Order endorsed on Motion of Attys. Dixon and Reynolds to withdraw as follows: "So Ordered. 12/11/70." Timbers, J. M-12/14/70. Copies mailed counsel.	
12/28	Notice of Taking Deposition of Southland Corporation of Texas, on January 14, 1971, filed by Plaintiff.	
12/31	Objections of Defendant International Telephone and Telegraph Corporation to Revised Interrogatory,*filed. Order entered thereon as follows: "Objections sustained. See Separate order entered (* and Affidavit of Frank X. Prevost)	

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DATE	PROCEEDINGS	Date O Judgm
1970	today." Timbers, J. M-1/4/71 Copies mailed to all counsel.	
12/31	Ruling on Defendant ITT'S Objections to Government's Revised Interrogatory in Lieu of Government's Interrogatories 29, 30 and 31, entered. Ordered that the objections of defendant ITT to the Government's revised interrogatory in lieu of government's interrogatories 29, 30 and 31 be, and the same hereby are, sustained, without prejudice to the government's timely renewal of said revised interrogatory in the event the government can show that it cannot obtain the information from sources other than ITT or its subsidiaries. Timbers, J. M-1/4/71 Copies mailed to all counsel.	
1971		
1/15	Objections of Defendant International Telephone and Telegraph Corporation to Interrogatories 29, 30 and 31, filed at Bridgeport.	
1/26	Stipulation concerning use of certain Budget Rent a Car Corporation of America documents produced in accordance with plaintiff's subpoena duces tecum, filed.	
1/27	Defendant ITT'S Interrogatories to Plaintiff, filed.	
1/29	Notice of Motion and and Motion for Order Compelling Discovery, filed by plaintiff.	
2/3	Notice of Taking Depositions of Howard T. Cohn, Vice President, IT&T, on March 2, 1971; Harry V. Williams, Chairman of the Boards and President, The Hartford Insurance Group, on Feb. 23, 1971; and John W. Clarke, President, Hartford Life Ins. Co., on February 24, 1971, filed by Plaintiff.	
2/16	Notice of Deposition of Ronald M. Streeter, Asst. Vice Pres. m Marketing, The Hartford Fire Insurance Company, Hartford, Conn., filed by Plaintiff.	
2/19	Order entered approving Stipulation concerning use of certain Budget Rent a Car Corporation of America documents produced in accordance with plaintiff's subpoena duces tecum. Timbers, J. M-2/19/71 Copies mailed Dept. of Justice; U.S. Attorney; Attorneys	
*	Shainker and Schafer.	
2/24	Notice of Taking Deposition of Southland Corp. of Texas, in Dallas, Texas, on March 8, 1971, filed by Plaintiff.	
2/23	Hearing on Plaintiff's Motion to Compel Discovery. Decision Reserved. Defendant to file Memorandum as Ordered by the Court on or before Thursday, Feb. 25, 1971. Plaintiff to reply by Monday, March 1, 1971. Timbers, J. M-2/25/71	
* 2/25	**Memorandum in Opposition to Pl /tiff's Motion to Compel Discove	
3/5	Deposition of Glen Evins, filed.	
3/8	Notice of Taking Depositions Herbert P. Schoen, Executive Vice President, Hartford Fire Ins. Co., on March 24, 1971; and Milton R. Bigham, Senior Vice Pres., Marketing, Hartford Fire Ins. Co., on March 25, 1971, filed by Plaintiff.	
"	Notice of Taking Depositions of John H. Kostmayer, Vice Pres., I.T.&.T., on March 30, 1971; and Stanley Luke, Senior Vice Pres., I.T.&T., on March 31, 1971, filed by Plaintiff.	
3/11	Deposition of Raymond H. Deck, filed.	
3/12	Notice of Taking Depositions of Hanley-Regan Chemicals, Inc, on March 22, 1971; and Hercules Corporation on March 26, 1971, filed by Plaintiff.	
3/18	Notice of Taking Deposition of Robert H. B. Baldwin, partner, Morgan Stanley & Company, on March 31, 1971, filed by the Plaintiff.	
3/26	Memorandum of Decision on Government's Motion for Order Compelling Discovery, entered. Ordered that (1) within 30 days from the date of this order (sooner, if possible), defendant ITT shall	

(Cont'd)

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D. C. 110 Rev. Civil Docket Continuation U.S.A. v. INT'L TELEPHONE & TELEGRAPH CORP., et al

DATE	PROCEEDINGS	Date Or Judgmen
1971	answer or otherwise comply with government's interrogatory 30, revised to read as follows: (See Memorandum for details); (2) that in answering or complying with paragraph (1) of this order, defendant ITT shall comply with the stipulations set forth in the revised letter of March 5, 1971 from ITT's counsel to the Court, a copy of which is attached hereto as APPENDIX A.; (3) that the Court's order of December 31, 1970, ruling on the objections of defendant ITT to the government's revised interrogatory in lieu of its Interrogatories 29, 30 and 31, is vacated. Timbers, J. Copies mailed from Hartford to Attorneys Sailer, Carlson, Lister and Karp. M-3/29/71	
3/29	Transcript of Hearing held on February 23, 1971 on Plaintiff's Motion to Compel Discovery, filed. Phelps, R.	
4/1	Deposition of John W. Clarke, filed.	
"	Deposition of Ronald M. Streeter, filed.	
4/5	Defendant ITT'S Request for Production of Documents, filed at Bridgeport.	
"	Defendant ITT'S Interrogatories to Plaintiff Set II, filed at Bridgeport.	
4/15	Motion of Attorneys Ralph C. Dixon and Richard M. Reynolds to Withdraw Appearance for The Hartford Fire Insurance Company, filed.	
"	Appearance of Joseph P. Cooney, entered for defendant, The Hartford Fire Insurance Co.	
4/21	Order entered by endorsement granting motion of Attorneys Ralph C. Dixon and Richard M. Reynolds to withdraw appearance for the Hartford Fire Insurance Company. Timbers, J. M-4/21/71 Copies mailed to all counsel.	
4/29	Deposition of Herbert P. Schoen, filed.	
"	Deposition of Milton R. Bigham, filed.	
5/10	Deposition of Howard T. Cobb, filed.	
5/11	Deposition of Stanley Luke, filed.	
5/25	Notice of taking of deposition of William H. Behrens, on June 9, 1971, filed by Defendant IT&T.	
"	Notice of taking of deposition of John F. Harris, on June 9, 1971, filed by IT&T.	
"	Notice of taking of deposition of Gilbert Sawyer, on June 9, 1971, filed by Defendant IT&T.	
"	Notice of taking of deposition of Harold LaCroix, on June 9, 1971, filed by Defendant IT&T.	
6/1	Order Assigning Case to Judge Blumenfeld for All Purposes entered. M-6/2/71. Memorandum to all counsel from Judge Timbers, filed. Copies of Order and Memorandum mailed to all counsel and Judge Blumenfeld.	
6/14	Plaintiff's Motion for Orders Reconvening Deposition of Robert H. Smith, Compelling Answers to Plaintiff's Oral Interrogation and Imposition of Costs and Notice of Motion, filed.	
6/16	Memorandum with Respect to Plaintiff's Motion Regarding Deposition of Robert H. Smith, filed by Defendant IT&T.	
6/25	Deposition of Harold LaCroix, filed.	
6/25	Deposition of Gilbert Sawyer, filed.	
"	Deposition of William H. Behrens, filed	
"	Deposition of John F. Harris, filed.	
6/28	Deposition of John H. Kostmayer, filed.	
6/29	Deposition of Harry V. Willaims, filed.	
8/10	Hearing held. Proposed Judgments handed to the Court.	

DATE 71	PROCEEDINGS	Date Ord. Judgment
	Counsel heard on stipulated judgments. No orders entered. Court adjourned at 11:35 A.M. Blumenfeld, J. M8/11/71	
/20	Court Reporter's Transcript of Proceedings of August 20, 1971, filed at Hartford. Collard, R.	
/23	Stipulation filed by counsel, together with proposed form of final judgment, to provide for the entry of final judgment 30 days from date.	
9/17	Application of Ralph Nader, Reuben B. Robertson, III and Beverly C. Moore, Jr. for Leave to Appear as Amici Curiae, and Memorandum in Support of Application, filed at Hartford.	
9/13	Court Reporter's Notes of Proceedings held on 8/10/71, filed at Hartford. (Collard, R.).	
9/23	Hearing on Proposed Judgments. Amicus Curiae Brief, filed. Decision Reserved. Blumenfeld, J.	
9/24	Order on Motion for Entry of Final Judgments, entered. The motion for entry of the consent decrees as submitted by the parties is entered. So Ordered. Copies mailed from Hartford to all counsel. Blumenfeld, J. M-9/27/71	
"	Final Judgment entered. (See Judgment for details) Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary, etc. This final judgment shall remain in full force and effect for ten (10) years, and no longer, from the date of entry hereof except as to any provision herein for which a shorter term is specified therein. Blumenfeld, J. M-9/27/71 Copies mailed to all counsel.	
972		
2/9	Court Reporter's Transcript of excerpt of notes of proceedings of September 23, 1971, filed. (Collard, R.)	
3/20	Court Reporter's Transcript of Excerpt of Proceedings of September 23, 1971 (Transcript filed for both Civil Nos. 13319 and 13320), filed. Collard, R.	
/5	Motion of Ralph Nader and Reuben Robertson, III to Intervene (for the limited purpose of making a motion under Rule 60(b)(3) F.R.C.P. to set aside the Final Judgement) and Notice of Motion, filed.	
"	Affidavit in Support of Motion to Intervene, filed by Reuben B. Robertson, III.	
"	Affidavit of Ralph Nader in Support of Motion to Intervene, filed.	
"	Affidavit of Alan B. Morrison in Support of Motion to Intervene, filed.	
"	Brief in Support of Motion to Intervene, filed.	
"	Motion for Admission Pro Hac Vice of Alan Morrison for the purpose of arguing Applicants Motion to Intervene, etc., and Notice of Motion, filed.	
/30	Supplementary Brief in Support of Motion to Intervene, filed.	
/5	Brief on Behalf of the United States in Opposition to Motion to Intervene, filed. Copy mailed to Judge Blumenfeld.	
"	Memorandum in Opposition to Applicants' Motion for Leave to Intervene, filed by defendants.	
/12	Hearing on (1) Motion of Ralph Nader and Reuben Robertson, III to Intervene; "Decision Reserved" Intervenor's brief to be filed by June 26, parties by July 5. (2, Motion for Admission Pro Hac Vice	

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110 Rev. Civil Docket Continuation U.S.A. v. INTERNATIONAL TELEPHONE & TELEGRAPH CORP., ET AL

ATE	PROCEEDINGS	Date Order Judgment N
974	Admitted	

Edward N. Costikyan / (For: Intervenor, Avis, Inc.
Paul, Weiss, Rifkind, Wharton & Garrison
345 Park Avenue
New York, N. Y. 10022

Irving Ribicoff - For DLJ as Amicus Curiae (Approved)
799 Main Street
Hartford, Connecticut

Richard Joyce Smith - Trustee
139 Main Street
Southport, Connecticut

F. Timothy McNamara (For Richard Joyce Smith)
102 Oak Street
Hartford, Conn. 06106

#5 13320

DOCKET

10a

. C. 110 Rev. Civil Docket Continuation U.S.A. v. INT'L. TELEPHONE & TELEGRAPH CORP., et al

DATE	PROCEEDINGS	Date Order Judgment No
1972	of Alan Morrison for Purpose of Arguing Applicants' Motion to Intervene. Granted, Blumenfeld, J. M-6/13/72.	
6/14	Court Reporter's Transcript of proceedings held on June 12, 1972, filed at Hartford. (Federal Reporters)	
6/30	Brief of Ralph Nader and Reuben B. Robertson, III on the Duty of the United States to Make Disclosures to the Court Concerning its Reasons for Agreeing to the Consent Decreee and attached 2 copies of (Parts 2 and 3) of the Hearings before the Committee on the Judiciary, United States Senate, 92nd Congress, filed.	
7/18	Reply Brief of Ralph Nader and Reuben B. Robertson, III, filed.	
9/7	Memorandum of Decision, entered. "The Court, having concluded that the movants' claim that the plaintiff United States comitted fraud on the court is wholly without merit, declines to reopen the judgment heretofore entered by the court with the consent of the parties. The movants' motion for permission to intervene in the instant case pursuant to F.R.C.P. 24(a)(2) and 24(b)(2) is denied. SO ORDERED. Blumenfeld, J. Copies to all counsel at Hartford. M-9/8/72.	
9/15	Amendment to Memorandum of Decision, entered. (1) Delete the sentence beginning at the bottom of page 14: "ITT had argued*** to acquire the Hartford stock." (2) on Page 27, footnote 16, in place of the last sentence in the second paragraph of (6) substitute the following: (See Amendment). Blumenfeld, J. M-9/18/72. Copies mailed to all counsel.	
10/30	Notice of Appeal, filed by Attorney for applicants for Intervention Ralph Nader and Reuben B. Robertson, III. Copies mailed to all counsel.	
12/27	Record on Appeal sent Supreme Court of U.S. Copies of Index sent counsel.	
1973		
3/22	Certified copy of Judgment of the U.S. Supreme Court, affirming Judgment of the District Court, filed, Rodak, Clerk. M-3/22/73.	
10/19	Memorandum of Ralph Nader and Reuben B. Robertson III, Amici Curiae, suggesting that the Court on its own Motion set aside the Judgment and Inquire into the Circumstances Surrounding the Negotiation of the Consent Decree, filed.	
11/6	Request by Amici Curiae to make oral presentation to the Court in connection with their memorandum filed on Oct. 19, 1973, filed.	
12/13	Memorandum of ITT Corp. in Opposition to Suggestion of Amici Curiae, filed at Hartford.	
12/14	Memorandum of U.S. in Opposition to the Suggestion of the Amici Curiae that the Court on its Own Motion Set Aside the Judgment and inquire into the circumstances surrounding the negotiations of the ITT Consent Decree, filed at Hartford.	
12/17	Appearance of Atty. Dwight Owen Schweitzer entered for Ralph Nader and Reuben Robertson, III, Amici Curiae.	
"	Hearing on Motion of Ralph Nader and Reuben B. Robertson, III, Amici Curiae, suggesting that the Court on its own Motion set aside the Judgment and inquire into the circumstances surrounding the negotiation of the Consent Decree. Argument by Counsel. Court Exh. A-Docket #72-Sup. Ct. Oct. Term. Decision Reserved. Blumenfeld, J. M-12/20/73.	
1974		
1/2	Court Reporter's Transcript of proceedings held on Dec. 17, 1973,	

DATE 1974	PROCEEDINGS	Date Ord Judgment
	filed at Hartford. Collard, R.	
1/14	Ruling on Request of Amici Curiae, entered. Nothing presented by the amici in the papers they have filed or the arguments they have made bears upon their right to intervene in this case. The amici are still without standing to intervene in this proceeding. U.S. v. I.T. & T. Corp., supra. The suggestion of the amici that the court reopen the decree and appoint a Special Master to examine into the circumstances surrounding the negotiations leading to the submission of a settlement decree, considered as an invitation, is declined, and if considered as a request, is denied. Since there appears to be no basis for any longer permitting Messrs. Nader and Robertson to appear as amici curiae, that permission is hereby terminated. So Ordered. Blumenfeld, J. Copies from Hartford to Attys Schweitzer, Cooney and Morrison. Copies mailed from New Haven to U.S. Atty; Dept. of Justice and to Atty Sailer. M-1/15/74	
8/7	Motion of Samuel J. Fountas and Equities Diversified of Ohio, Inc. to Intervene as Party Plaintiff; for the Purpose of Declaratory Judgment with Respect to Consent Decree, filed.	
8/15	Memorandum of ITT in Opposition to the Motion of Samuel J. Fountas and Equities Diversified of Ohio, Inc. to Intervene as Party Plaintiff for the Purpose of Declaratory Judgment with Respect to Consent Decree, filed at Hartford.	
8/16	Memorandum of U.S. in Opposition to the Motion of Samuel J. Fountas and Equities Diversified of Ohio, Inc. to Intervene as Party Plaintiff for the Purpose of Declaratory Judgment with Respect to Consent Decree, filed.	
8/22	Reply Memorandum of Movants in Support of Motion to Intervene filed.	
9/10	Motion for Admission of Visiting Attorney John J. Duffey, to participate in the trial and pretrial activities in this case, filed by Attorney Cooney.	
9/11	Order entered on above Motion for Admission of Visiting Attorney John J. Duffey, GRANTING same. Blumenfeld, J. M-9/12/74 Copies mailed.	
10/29	Petition of U.S. for appointment of Trustee for Avis, Inc., filed. Memorandum in Support thereof, filed. Proposed Order submitted. Resume of Kenneth E. Frantz, proposed by U.S. as Trustee, filed. Briefs due on Nov. 6th. Hearing on Petition - Nov. 11th. Hearing re Levitt & Sons - Nov. 4th at 9:30 A.M. Blumenfeld, J. M-10/31/74	
11/4	Motion permitting Avis, Inc. to Intervene, Notice of Motion and Memorandum in Support of Intervention, filed at Hartford.	
11/5	Order entered on Motion of Samuel J. Fountas and Equities Diversified of Ohio, Inc. to Intervene as Party Plaintiff for the Purpose of Declaratory Judgment with Respect to Consent Decree, as follows: "Motion denied. Having no interest there is no basis for affording standing." Blumenfeld, J. M-11/6/74. Copies mailed by Hartford Office.	
11/4	Stipulation between ITT & Government re appointment of Trustee for Levitt and proposed order, filed in open court. Counsel to report to Court as soon as possible re selection of Trustee. Blumenfeld, J. M-11/6/74	
11/5	Court Reporter's Transcript of proceedings held on Oct. 29, 1974, filed. Collard, R.	
"	Court Reporter's Transcript of proceedings held on Nov. 4, 1974 filed. Collard, R.	

(continued)

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D. C. 110 Rev. Civil Docket Continuation U.S.A. v. INT'L TELEPHONE & TELEGRAPH CORP., et al.

DATE	PROCEEDINGS
* 1974	
11/6	Memorandum in Response to Plaintiff's Petition for the Appointment of a Trustee for Avis, and in Opposition to Order Propo by ITT, filed at Hartford.
11/7	Motion to Intervene as a Defendant, filed by Avis at Hartfor
"	Appearance of Atty. James A. Wade entered for Avis, Inc., applicant for Intervention.
* 11/5	Court Reporter's Transcript of Proceedings of November 4, 1974 filed at Hartford. (Collard, R.)
11/7	Motion of Avis, Inc. to Intervene as a Defendant, filed.
11/12	Order endorsed on Motion of Avis, Inc. to Intervene as a defendant, granting same. Blumenfeld, J. M-11/13/74 Copies mail
11/11	Hearing on Motion of Avis, Inc. to Intervene. Granted. Proposed Order to be submitted by Avis by 11/15 re disposition of Avis Stock. Gov't. to reply promptly. Blumenfeld, J. M-11/14/74
11/14	Order endorsed on letter of Attorney Edward N. Costikyan APPROVING notice of appearance as attorney for Avis, Inc. Blumenfel M-11/14/74 Copies mailed.
"	Appearance of Edward N. Costikyan entered for Intervenor Avis, Inc.
11/18	Court Reporter's Transcript of Proceedings of November 11, 1974, filed at Hartford. Collard, R.
11/15	Memorandum on Behalf of Avis, Inc. in Support of Proposed Order, filed at Hartford.
11/20	Amicus Curiae Brief of Samuel J. Fountas and Equities Diversified of Ohio, Inc., filed.
11/18	Motion for Admission for Visiting Attorney Edward N. Costikyan, filed by Attorney Wade at Hartford.
11/19	Order endorsed on above Motion for Admission of Visiting Attorney Costikyan, granting same. Blumenfeld, J. M-11/20/74 Copies mailed.
11/26	Memorandum in Opposition to Proposed Divestiture Order Submitted by Avis, Inc., filed by U.S.A.
	Response of ITT to Memorandum of Avis, Inc. in Support of Proposed Order, filed at Hartford.
12/4	Hearing on Proposed Orders. Argument by Counsel. Avis to submit suggested modifications of proposed order and a Supplemental Brief. Parties to submit names of proposed trustees within one week. Blumenfeld, J. M-12/5/74
12/6	Court Reporter's Transcript of proceedings held on 12/4/74 (Hearing on Proposed Orders), filed at Hartford. Collard, R.
12/17	Petition for Appointment of Special Master and Memorandum in Support of Petition, filed by [illegible].
12/20	[illegible] ITT [illegible]
12/23	Response of International Telephone & Telegraph Corp. to Plaintiff's Petition for Appointment of Special Master, filed at Hartford.

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DATE	PROCEEDINGS	Date Judg
1974		
12/31	Memorandum of defendant I.T.T. concerning the appointment of a Trustee to Dispose of Levitt & Sons, Incorporated, filed at Hartford.	
12/23	Hearing on Motion for a Special Master. Decision Reserved. Papers to be filed by ITT re financial data of Avis & Levitt to be kept under seal until further Order of Court. Memorandum of ITT with respect to Construction of the Final Judgment, filed. Re: Levitt - Petition of DLJ Realty to File Brief Amicus Curiae approved. Blumenfeld, J. M-1/6/75	
1975 1/7	Court Reporter's Transcript of proceedings held on Dec. 23, 1974 (Motion for a Special Master), filed at Hartford. Collard, R.	
1/6	Trustee Order No. 1, entered. Ordered that Richard Joyce Smith of Southport, Conn., (the Trustee) is appointed to manage and dispose of ITT's undivested interest in Avis and its subsidiaries (the Trust Property) under the supervision of this court and subject to the provisions of this Order, etc. (See Order for further details) Blumenfeld, J. M-1/8/75 Copies mailed to all counsel and to Richard Joyce Smith.	
1/9	Appearance of Atty. F. Timothy McNamara entered for Richard Joyce Smith, Trustee of Avis of Order No. 1.	
1/10	Supplementary Brief of DLJ Real Estate, Inc. as Amicus Curiae with Regard to the appointment of a Trustee for ITT Levitt & Sons, Inc. and any subsidiaries of ITT Levitt & Sons, Inc., filed at Hartford.	
1/14	Trustee Order No. L-1 entered. Pursuant to Sec. IV(E) of the Final Judgment of Sept. 24, 1971, the Court hereby appoints Victor Palmieri and Company, Inc. (hereinafter referred to as "the Trustee") to manage and dispose of the stock of and all ownership interest in Levitt and Sons, Inc. and any of its subsidiaries as defined in the Final Judgment, etc. (See Order for further details) Copies mailed to all counsel Blumenfeld, J. M-1/15/75	
1/20	Trustee Order No. L-2, entered. The Court hereby orders and directs International Telephone and Telegraph Corporation ("ITT") to advance to Victor Palmieri and Co., Inc. ("FPCI") as Trustee the sum of $200,000 on following terms and conditions: (See Order for details.) Blumenfeld, J. M-1/21/75 Copies mailed.	
1/24	Court Reporter's Notes of proceedings held on Dec.4, 1974, filed at Hartford. Collard, R.	
2/7	Certification that a copy of the Trustee's First Report Purusant to Trustee Order No. 1 was served to Joseph P. Cooney, Esq., filed by F. Timothy McNamara, Esq.	
3/6	Government's Motion For Stay Of Court's Acceptance And Approval Of Trustee's Second Report Pursuant to Trustee Order No. 1, filed at Hartford.	
3/6	Government's Petition For Construction Of TRustee Order No. 1 And For Issuance Of Additional Instructions To Trustee, filed at Hartford.	
3/6	Memorandum Of Points And Authorities In Support Of The Government's Petition For Construction of Trustee Order No. 1 And for Issurance additional Instructions To Trustee, filed at Hartford.	
3/3	Application for interim compensation for services as Trustee, filed by Richard Joyce Smith.	

(Cont'd.)

DATE	PROCEEDINGS	Date Of Judgment
1975		
3/3	Trustee Order No. 2 Approving Interim Fees and Expenses entered. Blumenfeld, J.	
3/6	Hearing re Avis Divestment re Trustee's Report. Attys Wilson, Jaffe, & Nickerson admitted for purposes of this case on oral motion of H. Cohn. Argument by counsel for Gov't for clarification of Gov't's rights under trusteeship. Statement by Trustee Smith. Argument by counsel for Avis. Statement by Mr. Morrow, Director of Avis. Court adjourned at 11:00 A.M. Blumenfeld, J. M-3/7/75	
3/11	Court Reporter's Transcript of Proceedings of March 6, 1975, filed at Hartford. Collard, [illegible].	
3/24	Trustee Order No. L-3, entered. Blumenfeld, J. M-3/25/75 Copies mailed.	
4/14	First Report Of Victor Palmieri And Company Incorporated, Trustee Of Levitt And Sons, Inc., filed at Hartford.	
4/14	First Report Of Victor Palmiere And Company Incorporated, Trustee Of Levitt And Sons, Inc., filed at Hartford.	
5/23	Order endorsed on Letter from John A. Koskinen, Managing Principal, Victor Palmieri and Co., Inc., Levitt Division, APPROVING the filing of Trustee's Report within 45 days after the end of each calendar quarter. Blumenfeld, J. Copies mailed.	
"	Trustee's Order No. L-4 entered. (re proposed sale by Levitt and Sons of Puerto Rico, Inc. of approximately 237 cuerdas of the so-called Vista del Morro land holdings, and of a proposed grant of option by Levitt and Sons, Inc. ("LSI") to purchase all of the issued and outstanding stock of Sabana Development Corp., etc.) Blumenfeld, J. Copies mailed.	
"	Trustee's Notice of Sale of Land and Grant of Option to purchase Stock, filed. Copies mailed.	
5/28	Affidavit of Service of Trustee's Notice of Sale of Land and Grant of Option to Purchase Stock, filed at Hartford.	
6/9	Accounting For Expenditures Against Advance Made Pursuant To Order L-2, filed at Hartford.	
6/11	Letter from Attorney John J. Duffey, of Tepper, Alloway, Goodman, DeLeone & Duffey, requesting that his name and firm be removed from list of Attorneys appearing on docket, filed and "So Ordered." Blumenfeld, J. M-6/11/75 Copy mailed to Atty Duffey.	
6/24	Application of Trustee, Richard Joyce Smith, (for ITT) for approval of interim fees and expenses, filed and endorsed as follows: "Request accepted and upon review the request for fees and expenses is approved. June 24, 1975." Blumenfeld, J. M-6/25/75 Copies mailed.	
7/15	Finding that the request for an interim payment of fees to the trustee and expenses incurred to be reasonable, his application as of July 1, 1975 for approval of the payments described therein ~~and for interim fees and expenees are approved for payment filed.~~ ~~(Blumenfeld, J.)~~ The foregoing was entered on Trustee's Amended and and restated Fee Application. Copies Mailed. M-7/18/75	
8/6	Second Report of Victor Palmieri and Company Incorporated, Trustee of Levitt and Sons, Inc. filed.	
11/11	Third Report of Victor Palmieri and Company Incorporated, Trustee of Levitt and Sons, Inc. filed.	
12/16	Chambers conference with Trustee for Avis and Dept. of Justice attorneys, held. Blumenfeld, J.	
1976		
1/14	Trustee Order No. 3 filed. (Blumenfeld, J.) Copies Mailed. M-1/15/76.	

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DATE	PROCEEDINGS	Date Judgm
1/26	Trustee Order No. L-5 entered amending Trustee Order No. L-3 re: LSI trustee fees. (Blumenfeld, J.) 1/2 Copies Mailed.	
2/10	Fourth Report of Victor Palmieri and Company Incorporated, Trustee of Levitt and Sons, Incorporated filed.	
2/10	Fourth Report of Victor Palmieri and Company Incorporated, Trustee of Levitt and Sons, Incorporated filed.	
3/8	Trustee Order No. L-6 entered as to ITT. (Blumenfeld, J.) M-3/10/76. Copies Mailed.	
4/26	Trustee Order No. 4 Amending Trustee Order No. 3 filed. M-4/27/76.	
5/21	Fifth Report of Victor Palmieri and Company Incorporated, Trustee of Levitt and Sons, Incorporated filed.	
6/10	Trustee's Third Report Pursuant to Trustee Order No. 1 filed.	
6/17	Application of Richard Joyce Smith, Trustee for approval by the Court for fees and expenses in connection with public offering by the Trustee of 1,250,000 shares of Avis Common Stock filed.	
8/12	Sixth report of Victor Palmieri and Company Incorporated Trustee of Levitt and Sons, Incorporated filed.	
8/19	Appearance on behalf of petitioner, Overland Realty, Inc. filed by Attorney J. Read Murphy and David C. Anderson.	
"	Petition for leave to sue Trustees filed by petitioner Overland Realty, Inc.	
"	Notice of petition for leave to sue Trustees filed.	
8/31	Application of Richard Joyce Smith, Trustee for approval by Court of expenses incurred in connection with the public offering by Trustee of shares of Avis Common Stock filed.	
9/13	Petition of Overland Realty, Inc. for leave to sue trustee hearing marked "Over" to September 27, 1976. Blumenfeld, J. M-9/15/76.	
9/13	Endorsement entered on Application of Richard Joyce Smith's, Trustee Application for approval by Court of expenses incurred in connection with the public offering by Trustees of shares of Avis Commor Stock as follows: "The application is granted and the payment proposed is authorized and approved" Blumenfeld, J. M-9/15/76. copies mailed.	
9/22	Memorandum in Opposition to Petition for Leave to Sue Trustee filed by Victor Palmieri and Company Incorporated.	
9/27	Decision Reserved on Petition of Overland Realty, Inc. For Leave to Sue Trustee before Blumenfeld, J. M-9/28/76	
9/30	Ruling on Petition For Leave to Sue the Trustee filed: Overland Realty, Inc. had filed a petition for leave to sue the trustee of Levitt and Sons, Inc., Victor Palmieri and Company. "Overland cites to the Court the requirements of 28 U.S.C. §959(a). But that statute by its very wording allows a trustee to be sued without leave of the appointing court. "The Peition for Leave to Sue Trustee is deni SO ORDERED. Blumenfeld, J. M-10/1/76. copies mailed.	
11/11	Seventh report of Victor Palmieri and Company Incorporated Trustee of Levitt and Sons, Incorporated filed.	
11/11	Conference with Trustee for Levitt & Sons, Inc. in U.S. vs/ I.T.T. regarding quarterly report (3/4 hr.)	
12/10	Court reporter's notes of proceedings held before Blumenfeld, J. at Hartford, Connecticut on 9/27/76 filed. Collard, R.	
12/20	Trustee Order No. L-7 filed. (orig. with MJB).	
12/20	Chambers conference with the Trustee for Levitt & Sons in U.S. v. ITT, Civil 13,320, regarding filing of Trustee Order L-7 - 1/2 hr. Blumenfeld, J.	

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D. C. 110 Rev. Civil Docket Continuation U. S. A vs/ INTERNATIONAL TELEPHONE AND TELEGRAPH CORP, et

DATE	PROCEEDINGS	Date o Judgme
1977		
1-25	Application of Richard Joyce Smith for approval by the Court of interim fees and expenses for the period June 4, 1976 through December 31, 1976, to be paid by ITT as follows: (see document for details). filed.	
2/15	Eighth report of Victor Palmieri and Company Incorporated Trustee of Levitt and Sons, Incorporated filed.	
3/31	Trustee Order No. L-8 filed. Blumenfeld, J. M-4/1/77. copies mailed.	
4/21	Trustee's Fourth Report pursuant to Trustee Order No. 1 filed.	
4/25	Trustee Order No. L-9 filed. Blumenfeld, J.	
"	Trustee Order No. L-10 filed. Blumenfeld, J.	
5/9	Trustee Order No. 5 filed. (re: disposal of ITT interest in Avis, Inc.)	
5/13	Trustee Order No. L-11 filed. (re: selling of plants and land of Suffolk Sanitary Corp. & Selden Sanitary Corp.) Blumenfeld, J. M-5/16/77. copies mailed.	
5/13	Ninth Report of Victor Palmieri and Company Incorporated Trustee of Levitt and Sons, Incorporated filed.	
5/18	Order to Show Cause entered for appearance at Hartford on May 23, 1977, at 11:30 A.M. Blumenfeld, J.	
"	Affidavit of Roderick A. Dowling, filed.	
"	Motion for Appointment of James Pettit and/or David Brauser to Serve Process filed at Hartford. (filed by Atty Ribicoff)	
"	Attested copies of Order to Show Cause and Motion for Appointment of Indifferent Person handed to Atty Ribicoff at Hartford for service in New York. Attested copies handed to the Marshal at Hartford for service on U.S.A. and Hartford Fire.	
5/23	Affidavit of Eli Shapiro filed.	
"	Affidavit of Colin M. Marshall filed.	
"	Affidavit of John P. McEnroe filed.	
"	Affidavit of John J. Scanlon filed.	
"	Affidavit in opposition to motion of Fuqua Industries, Inc. to Intervene and for injunction filed.	
"	Memorandum of the Trustee in opposition to the application of the proposed intervenor plaintiff Fuqua Industries, Inc., For a preliminary injunction and other relief filed.	
"	Memorandum in support of proposed intervenor's motion filed.	
"	Memorandum of Avis, Inc. in opposition to motions for preliminary injunctions filed.	
"	Brief on behalf of the United States in Opposition to Motion to Intervene filed.	
5/24	Marshals return of service filed. (Order to Show Cause).	
5/23	Affidavit of James S. Morris in opposition to the motion of Fuqua Industries, Inc. to intervene and for injunctive relief filed.	
"	Reply affidavit of Roderick A. Dowling in support of motion brought on by Order to Show Cause by Fuqua.	
"	Reply memorandum in support of proposed intervenor's motion filed.	
"	Motion for admission of out of state counsel for purposes of these cases filed.	
"	Affidavits of services of mail by Lawrence N. Chanen and Thonas Ahnaruma filed.	
/23	Hearing held on Order to Show Cause. Motion to Intervene - Denied for reasons stated in Court. Motion for Preliminary Injunction - Denied. Motion for Stay - Denied with leave to renew in Circuit Court. Reply memorandum in support of proposed Intervenor's motion filed.	

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DATE 1977	PROCEEDINGS	Date O Judgme
	Certificate of Service re Affidavit in opposition to motion of Fuqua Industries, Inc. to intervene, etc. and memorandum filed. Motion to admit Milton S. Gould to represent proposed Intervenor, Fuqua Industries - Granted. Affidavit of Roderick Dowling filed. Affidavit of James S. Morris in opposition to order to show cause filed. Oral Motion to Admit Attorney Patrick Sullivan to represent at this hearing, Richard Smith, Trustee - Granted. Oral Motion to Admit Attorney Topkas for this hearing - Granted. Blumenfeld, J. M-5/26/77.	
5/25	Notice of Appeal filed by proposed intervenor Fuqua Industries, Inc. copies mailed to counsel of record. Copy of Notice along with copy of docket entries sent to U.S.C.A.	

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED
MAY 18 12 57 PM '77
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

---------------------------------------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY,

Defendants,

and

AVIS, INC.,

Defendant Intervenor.

---------------------------------------x

Civil Action No. 13,320

Before The Honorable
M. Joseph Blumenfeld,
D.J.

ORDER TO SHOW CAUSE

Upon the annexed affidavit of Roderick A. Dowling, sworn to May 17, 1977, the proposed complaint of Fuqua Industries, Inc., and upon all prior pleadings and proceedings had herein, and sufficient cause appearing therefor, it is

ORDERED that the parties and defendant intervenor herein, and each of them, or their respective attorneys, show cause before this Court on the 23rd day of May, 1977, at 11:30 a.m. or as soon thereafter as counsel can be heard in Courtroom of the United States Courthouse, Hartford, Connecticut, why an order should not be made and entered herein:

(1) Granting the motion of Fuqua Industries, Inc. to intervene in the proceedings herein;

(2) With respect to the matters contained in proposals 1, 2 and 3 listed in the Notice of Annual Meeting of Stockholders of Avis dated May 4, 1977 ("Notice"), enjoining Richard Joyce Smith as Trustee pursuant to an Order of this Court dated

January 6, 1975 (the "Trustee") and defendant intervenor Avis, Inc. ("Avis") from (i) voting any shares of Avis common stock at the forthcoming annual meeting of Avis stockholders presently scheduled to be held on May 25, 1977, and (ii) soliciting any proxies with respect thereto.

(3) Enjoining Avis from holding the forthcoming annual meeting of its stockholders, or any other meeting of its stockholders, to vote upon the matters contained in proposals 1, 2 and 3 as set forth in said Notice until further order of this Court; and

(4) Granting such other and further relief as to the Court may seem just and proper; and it is further

~~ORDERED, that pending the hearing and determination [illegible] the within motion, the Trustee and Avis be and they hereby are enjoined, with respect to the matters contained in proposals 1, 2 and 3 of the Notice, from (i) voting any shares of Avis common stock at the forthcoming annual meeting or any other meeting of Avis stockholders; (ii) soliciting any proxies with respect thereto; and (iii) holding the forthcoming annual meeting of Avis stockholders, and it is further~~

ORDERED, that service of a copy of this Order to Show Cause and supporting papers upon the parties and the Trustee on or before the 19th day of May, 1977 at 11:00 a.m. shall be deemed good and sufficient.

Dated: Hartford, Connecticut
May 18, 1977

12:44 P.M.

M. Joseph Blumenfeld
U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----------------------------------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY,

Defendants,

and

AVIS, INC.,

Defendant Intervenor.

-----------------------------------x

Civil Action No. 13,320

Before The Honorable
M. Joseph Blumenfeld,
D.J.

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

RODERICK A. DOWLING, being duly sworn, deposes and says:

1. I am a vice president and general counsel of Fuqua Industries, Inc. ("Fuqua") and make this affidavit in support of the motion brought on by Order to Show Cause by Fuqua, the proposed intervenor herein, for an order:

(1) Granting Fuqua permission to intervene herein;

(2) With respect to the matters contained in proposals 1, 2 and 3 listed in the Notice of Annual Meeting of Stockholders of Avis, Inc. ("Avis") dated May 4, 1977 ("Notice"), enjoining Richard Joyce Smith as Trustee pursuant to an Order of this Court dated January 6, 1975 (the "Trustee") and defendant inter-

venor Avis from (i) voting any shares of Avis common stock at the forthcoming annual meeting of Avis stockholders presently scheduled to be held on May 25, 1977, and (ii) soliciting any proxies with respect thereto;

(3) Enjoining Avis from holding the forthcoming annual meeting of its stockholders, or any other meeting of its stockholders, to vote upon the matters contained in proposals 1, 2 and 3 in said Notice until further order of this Court; and

(4) Granting such other and further relief as to the Court may seem just and proper.

2. Fuqua is a diversified manufacturing and distribution and service company, the shares of which are listed on the New York Stock Exchange. In 1976, Fuqua had sales of $535 million and net income of approximately $13.6 million. Manufactured and distributed products include lawn and garden equipment sold under the "Snapper" and "Comet" brand names and a wide variety of sporting goods sold under the "Hutch", "Reach", "Ajay" and "Ebonite" brand names. Fuqua's service operations include an entertainment segment containing a large theatre circuit, broadcast properties (both TV and radio) and a photofinishing company (Colorcraft) located throughout the midwest and Atlantic states. Fuqua also operates a large trucking firm (Interstate) with routes throughout the midwest and North Eastern parts of the United States and from Quebec to Vancouver in Canada.

3. The Order prayed for herein is sought to enable Fuqua to purchase the 3,743,504 shares of Avis' common stock constituting 47% of the outstanding shares of common stock of Avis now held by the Trustee (the "Trust Property") at a cash

price of $15.50 a share. It is Fuqua's position that such purchase would be more advantageous, fair and equitable to and in the better interests of Avis, its stockholders and defendant International Telephone and Telegraph Corporation ("ITT") than the plan of divestiture of the Trustee Property as is set forth in Trustee Order No. 3 of this Court dated January 14, 1976 which directs the Trustee:

> "* * * to begin the disposition of the Trust Property by way of a series of public offerings beginning in the first half of 1976 and continuing from time to time thereafter."

4. This particular order was signed against a background of offers for the private purchase of the Trust Property which the Trustee deemed unsatisfactory. Thus, the Trustee, in his Second Report to this Court pursuant to Trustee Order No. 1 dated March 3, 1975, stated:

> "To choose the alternative of a private sale of the Trust Property at this time at current market values would be extremely disadvantageous for the existing public shareholders of Avis. To date the only offers received have been two tentative proposals for purchase of the Trust Property at six to seven dollars a share on a basis which forces minority shareholders out at the same price.
>
> "A third tentative proposal provides for the purchase by a private group of $25,000,000 principal amount of debentures of Avis due no earlier than 1987 and convertible over a period of five years into Avis Common Stock at $6.00 per share. The proposal is conditioned on the agreement by the Trustee to grant a five year option to Avis to purchase the Avis shares held by the Trustee at $6.00 per share plus one-half of the amount by which the market price at the time of exercise might exceed $6.00. The shares optioned would be used for employee stock purchase and bonus plans, and to the extent not so utilized, the remainder would be offered to shareholders. At the end of the option period I would have to sell any Avis shares that I then held to this group at the lower of $6.00 per share or the then market price. I do not consider such a proposal feasible for various reasons. It would involve

> too long a delay in termination of the Trust, too great a dilution of Avis common stock and an unfair advantage to the initiating group."

5. I ask the Court to note that Fuqua's offer to purchase the Trust Property is not subject to the infirmities described in the above quoted portion of the Trustee's Second Report. Its offer is for a cash purchase at a price of $15.50 a share,* which is $1.624 per share above the market value of Avis' common stock as at the close of business on May 16, 1977 and $1.24 per share above its book value per share as of December 31, 1976. The offer is to purchase only the 3,743,504 shares of common stock held by the Trustee for the benefit of ITT, it does not extend to shares owned by the other stockholders of Avis (although it is Fuqua's present intention, if permitted to purchase the said 3,743,504 shares of Avis' common stock, promptly thereafter to propose a tax free transaction to the remaining Avis stockholders at a price per share for their shares at least equivalent to the price per share paid to the Trustee for the said 3,743,504 shares). Thus, if the Court permits the purchase by Fuqua, ITT's divestiture of the Avis shares would be completed upon such purchase; there would not be any delay in the termination of the Trust (indeed, upon completion of the sale, the Trust would terminate, together with its attendant expenses); none of the minority stockholders of Avis would be required or compelled to sell their shares; Avis would no longer be subject to the vagaries of the sale or sales of 47% of its outstanding common stock.

6. Thus, Fuqua seeks to intervene herein in order to demonstrate to the Court that an appropriate amendment of Trustee Order No. 3 to permit a sale of the Trust Property to Fuqua would be in the best interests of Avis, its stockholders and of the beneficiary of the trust, ITT.

---

*This is $6.90 more than the per share price for the sale of 1,250,000 shares on May 27, 1976.

7. The annual meeting of Avis stockholders is presently scheduled to be held on May 25, 1977, for the following purposes:

> "(1) To elect twelve (12) directors of the Company to hold office for terms of one to three years and until their respective successors shall have been elected and shall have qualified or, if Item (2) is not approved, until the next Annual Meeting of Stockholders and until their respective successors shall have been elected and shall have qualified;
>
> "(2) To act upon a proposal to amend the By-laws of the Company to provide for the division of the Board of Directors into three classes, the terms of which expire at successive Annual Meetings of Stockholders, to provide that directors may be removed from office only for cause and to increase the number of directors required to constitute a quorum to a majority of the entire Board, and to amend the Certificate of Incorporation of the Company to require a special stockholder vote to amend the foregoing By-law provisions;
>
> "(3) If the proposal described in Item (2) is approved, to act upon a proposal to amend the Certificate of Incorporation of the Company to require a special director or stockholder vote for certain mergers, consolidations and similar transactions under specified circumstances and for any alteration or repeal of such provisions;
>
> "(4) To elect Arthur Anderson & Co. independent auditors of the Company for the year 1977; and
>
> "(5) To consider and transact such other business as may properly come before the meeting or any adjournments thereof."

8. Page 6 of the proxy statement for the annual meeting describes the purpose of proposals (2) and (3) in paragraph 5 as follows:

> "The proposed amendments of the Company's Certificate of Incorporation and By-laws are intended, in general, to make more difficult, and therefore discourage, attempts by others to acquire control of the Company, through acquisitions of stock or otherwise, in transactions not approved by the Company's Board of Directors. Neither the Company nor the Trustee is aware of any pending or proposed transaction that would be affected by the proposed amendments."

9. As the above quoted portion of the proxy statement indicates, adoption of proposals two and three would discourage attempts by third parties to purchase large stock positions in Avis, including purchase of the Trust Property. Should the Court finally determine that the Trust Property may be sold in a private transaction subsequent to the adoption of the proposal for staggered terms for members of the Board of Directors (Proposal (2)), it would require at least two annual meetings of stockholders of Avis for the purchaser of the 3,743,504 shares to elect a majority of the board of directors and thus commence its own management at Avis to which the ownership of such shares entitles it.

10. Should the annual meeting be held and proposals (2) and (3) in paragraph 7, supra, be adopted, Fuqua will withdraw its offer to purchase the Trust Property.

11. Fuqua submits that in the context of its offer to purchase the Trust Property, proposals 1, 2 and 3 should not be submitted to the stockholders of Avis until this Court and the Trustee have had a full opportunity to evaluate Fuqua's offer. Should Fuqua's offer be accepted, the proposed "anti-takeover" amendments would be subject to the wishes of the management of Avis as then constituted.

12. The above quoted portion of the proxy statement states that neither Avis nor the Trustee was aware at the time of issuance of the proxy statement of any proposed transaction that would be affected by the proposed amendments. They are now so aware because of the mailing to them, as well as to the Court, of Fuqua's letter of May 16, 1977, a copy of which is annexed hereto as Exhibit A. Thus, I submit that the vote on

the matters contained in proposals 1, 2 and 3 should be delayed for the additional reason that a postponement is necessary to permit the Avis stockholders to be informed of Fuqua's offer.

13. Fuqua submits that its offer is in the best interests of Avis, its stockholders, and ITT. Neither the Avis stockholders nor ITT should be deprived of the benefits of the Fuqua offer by adoption of the proposed amendments at the presently scheduled annual stockholders meeting. Should Fuqua's motion to intervene be granted, it will immediately serve and file the complaint to intervene, a copy of which is annexed hereto as Exhibit B, and then promptly move to amend Trustee Order No. 3 to permit the proposed purchase. At that time, Fuqua intends to present further evidence regarding the benefits of the proposed purchase to all concerned parties.

14. No prior application has been made to this or any other court for relief similar to that sought herein.

WHEREFORE, it is respectfully requested that the present motion be granted in all respects.

Roderick A. Dowling
RODERICK A. DOWLING

Sworn to before me this
17th day of May, 1977.

Elsie L. Selig

ELSIE L. SELIG
Notary Public, State of New York
No. 31-3559950
Qualified in New York County
Commission Expires March 30, 1979

Exhibit A

SHEA GOULD CLIMENKO & CASEY
330 MADISON AVENUE
NEW YORK, NEW YORK 10017
(212) 661-3200
TELEX 424416
CABLE: HOLMANG

WILLIAM A. SHEA
JESSE CLIMENKO
BRUCE A. HECKER
JAMES J. A. GALLAGHER
BERNARD J. RUGGIERI
ALLAN A. PARKER
ROBERT J. PURCELL
IRVING JACOBSON
SAMUEL W. INGHAM, JR.
JOHN A. CRAIG
KEVIN B. MCGRATH
WILLIAM C. FINNERAN, JR.
ALLAN R. TESSLER
HERMAN A. DURSEY
THOMAS E. CONSTANCE
LESTER YASSKY
JOEL L. PAPERNIK

MILTON S. GOULD
ROBERT J. CASEY
EDWIN H. JONES
BERNARD D. FISCHMAN
MARTIN L. SHELTON
RALPH L. ELLIS
GEORGE DE GENARO
SHELDON O. CAMHY
WILLIAM A. HAGAN, JR.
MICHAEL LESCH
LEON H. GOLD
VINCENT W. QUINN, JR.
RONALD H. ALENSTEIN
ARNOLD S. JACOBS
IRA POSTEL
ROBERT W. GLEASON

MILES F. MCDONALD
PAUL D. STREIT
OF COUNSEL

WASHINGTON, D.C. OFFICE
1800 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 833-9850
CABLE NIMGO

MARIO V. MIRABELLI*
JUDSON A. GOULD*
RESIDENT PARTNERS

EUROPEAN OFFICE
50 CHARLES STREET
LONDON W1X 7PG
01-491-3515
TELEX [illegible]*

GEORGE C. DOSS*
RESIDENT PARTNER

*NOT ADMITTED IN NEW YORK

May 16, 1977

Richard Joyce Smith, As Trustee
for International Telephone & Telegraph Corp.
c/o Whitman & Ransom
522 Fifth Avenue
New York, New York   10036

Dear Mr. Smith:

We write on behalf of our client, Fuqua Industries, Inc., 3800 First National Bank Tower, Atlanta, Georgia 30303 ("Fuqua").

We wish to advise that Fuqua intends to make an offer to purchase for cash all of the 3,743,504 shares, or approximately 47%, of Avis, Inc.'s ("Avis") common stock held by you as Trustee for International Telephone & Telegraph Corp. ("ITT"). From a reading of Avis' announcement in the Wall Street Journal on May 12, 1977, and the Avis Proxy Statement dated May 4, 1977, it appears that your proposal as Trustee that Avis stockholders consider procedures designed to discourage acquisition attempts would have the effect of discouraging even an offer such as that of our client; should the proposal be adopted, Fuqua would not be interested in purchasing the 47% block. We urge that you join us in our request that the Board delay the Avis Annual Meeting of Stockholders or that you not vote your shares at such meeting until the court has passed upon our application as described hereinafter, because the adoption of the proposal may frustrate the ability of ITT to receive the best available offer for its Avis shares.

Richard Joyce Smith, As Trustee
for International Telephone & Telegraph Corp.
May 16, 1977
Page two

Additionally, pursuant to Rule 14a-9 of the Securities Exchange Act of 1934, we suggest that Avis is required to update its Proxy Statement and to advise its stockholders of Fuqua's offer and the action which you intend to take relative thereto.

In view of the Order of United States District Court for the District Court of Connecticut dated January 14, 1976, we intend to file with that Court, within the next few days, an application on behalf of Fuqua for an order authorizing you to accept such offer and to enter into a contract to sell the 3,743,504 shares of common stock of Avis that you are holding as Trustee for $15.50 per share.

We would appreciate learning your intentions as far in advance as is possible of the Annual Meeting, which is scheduled to take place on May 25, 1977.

Should you require any further information regarding our client's offer, feel free to call the undersigned in the first instance, or Thomas E. Constance of this office.

Thank you in advance for your expeditious cooperation in this matter.

Very truly yours,

Milton S. Gould

MSG:mk

cc: Hon. Joseph M. Blumenfeld
Hon. Peter C. Dorsey
Department of Justice -
Anti Trust Division

continued . . .

cc: Board of Directors of Avis, Inc.
Mr. Drummond C. Bell
Mr. Rodney C. Gott
Mr. Robert W. Haack
Mr. William W. Lyon
Robert C. O'Brien, Esq.
Dr. Eli Shapiro
Olcott D. Smith, Esq.
Mr. William C. Fruhan, Jr.
Mr. Alva T. Bonda
Mr. John J. Scanlon

International Telephone & Telegraph Corp.
Mr. H. S. Geneen
Chairman & Chief Executive Officer
H. J. Aibel, Esq.
Senior Vice President & General Counsel

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
- x

UNITED STATES OF AMERICA,
Plaintiff,

-against-

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY,
Defendants,

and

AVIS, INC.,
Defendant Intervenor

and

FUQUA INDUSTRIES, INC.,
Plaintiff Intervenor.
- x

Civil Action
No. 13,320

Before the Honorable
M. Joseph Blumenfeld,
D. J.

INTERVENOR'S COMPLAINT

Plaintiff intervenor Fuqua Industries, Inc., by its attorneys, Shea Gould Climenko & Casey, for its complaint herein, alleges:

1. Plaintiff intervenor, Fuqua Industries, Inc. ("Fuqua"), is a corporation duly organized and existing under the laws of the State of Delaware.

2. This Court, in a Final Judgment herein dated Septembe 24, 1971, ordered and directed that the defendant, International Telephone and Telegraph Corporation ("ITT"), divest within three years all of its interest in defendant intervenor Avis, Inc. ("Avis"), along with its interest in certain other corporations.

3. In its order dated January 6, 1975 entitled "Trustee Order No. 1," this Court found that defendant ITT had failed to carry out the divestiture of its interest in Avis as required

by the Final Judgment and therefore, appointed Richard Joyce Smith (the "Trustee") to manage and dispose of ITT's undivested interest in Avis (the "Trust Property").

4. In his Second Report, pursuant to Trustee Order No. 1 dated March 3, 1975, the Trustee set forth various steps he proposed to take to accomplish divestiture of the Trust Property. One aspect of his proposal was a subscription by ITT for 1,487,000 newly issued shares of Avis common stock at a price of $11.63 a share. ITT would then promptly turn over such shares to the Trustee to be held as part of t[illegible] Trust Property.

5. In his Second Report, the Trustee further stated his intention not to accept for a twelve-month period commencing on January 15, 1975 any private offer for the Avis shares held in the Trust at a price less than $11.63 per share.

6. In his Second Report, the Trustee further stated his reasons for rejecting private offers he had received for purchase of the Trust Property. He described two such offers as tentative proposals for purchase of the Trust Property at six to seven dollars a share on a basis which would force minority shareholders of Avis to sell their shares at the same price. A third proposal received by the Trustee provided for purchase of debentures convertible into Avis common stock over a five year period at a price of $6.00 per share. The Trustee rejected this proposal on the grounds that it would involve too long a delay in termination of the Trust, too great a dilution of Avis common stock and an unfair advantage to the initiating group.

7. By order dated January 14, 1976, entitled "Trustee Order No. 3," this Court stated that the Second Report of the Trustee had been accepted and approved.

8. Trustee Order No. 3 further stated that the Trustee had advised the Court that he had not, as of the date of the Order, received any firm offer for the purchase of the Trust Property and was not then engaged in any negotiations with any party which would lead to such an offer.

9. Trustee Order No. 3 directed the Trustee to begin the disposition of the Trust Property by way of a series of public offerings beginning in the first half of 1976 and continuing from time to time thereafter.

10. In his Third Report dated June 7, 1976, the Trustee stated that on May 27, 1976, a public offering of 1,250,000 shares of Avis common stock, constituting a portion of the Trust Property, was made at a price of $9.25 per share, less an underwriting discount of $.65 per share.

11. The Trustee's Third Report further stated that by virtue of the transaction described in paragraph 10, supra, and an exchange of preferred shares held by the Trustee for shares of common stock, the Trustee, as of the date of his Third Report, held 3,743,504 shares of Avis common stock, constituting approximately 47% of the total outstanding shares.

12. Plaintiff intervenor Fuqua seeks to purchase the 3,743,504 shares of Avis common stock now held by the Trustee for cash at a price of $15.50 per share.

13. Fuqua's offer to purchase is not subject to the infirmities which led the Trustee to reject previous offers by third parties as described in paragraph 6, supra. The offering price is higher than the per share market value as at the close of business on May 16, 1977 and higher than the book value per share as at December 31, 1976.

14. The annual meeting of Avis shareholders is presently scheduled to be held on May 25, 1977, for the following purposes:

> "(1) To elect twelve (12) directors of the Company to hold office for terms of one to three years and until their respective successors shall have been elected and shall have qualified or, if Item (2) is not approved, until the next Annual Meeting of Stockholders and until their respective successors shall have been elected and shall have qualified;
>
> "(2) To act upon a proposal to amend the By-laws of the Company to provide for the division of the Board of Directors into three classes, the terms of which expire at successive Annual Meetings of Stockholders, to provide that directors may be removed from office only for cause and to increase the number of directors required to constitute a quorum to a majority of the entire Board, and to amend the Certificate of Incorporation of the Company to require a special stockholder vote to amend the foregoing By-law provisions;
>
> "(3) If the proposal described in Item (2) is approved, to act upon a proposal to amend the Certificate of Incorporation of the Company to require a special director or stockholder vote for certain mergers, consolidations and similar transactions under specified circumstances and for any alteration or repeal of such provisions;
>
> "(4) To elect Arthur Andersen & Co. independent auditors of the Company for the year 1977; and
>
> "(5) To consider and transact such other business as may properly come before the meeting or any adjournments thereof."

15. Page 6 of the proxy statement for the annual meeting describes the purpose of proposals (2) and (3) in paragraph 5 as follows:

> "The proposed amendments of the Company's Certificate of Incorporation and By-laws are intended, in general, to make more difficult, and therefore discourage, attempts by others to acquire control of the Company, through acquisitions of stock or otherwise, in transactions not approved by the Company's Board of Directors. Neither the Company nor the Trustee is aware of any pending or proposed transaction that would be affected by the proposed amendments."

16. Should the annual meeting be held and proposals (2) and (3) in paragraph 14, supra, be adopted, Fuqua would withdraw its offer to purchase the Trust Property.

17. Fuqua submits that its offer is in the best interests of Avis, its stockholders, and ITT. The Avis stockholders and ITT should not be deprived of the benefits of the Fuqua offer by adoption of the proposed amendments at the presently scheduled stockholders meeting.

WHEREFORE, plaintiff intervenor respectfully prays as follows:

(1) that Trustee Order No. 3 be amended to permit the sale of 3,743,504 shares of Avis common stock currently held by the Trustee to plaintiff intervenor for cash at a price of $15.50 per share;

(2) that with respect to the matters contained in proposals 1, 2 and 3 listed in the Notice of Annual Meeting of Stockholders dated May 4, 1977, a preliminary and permanent injunction issue enjoining the Trustee and Avis from (1) voting any shares of Avis common stock at the forthcoming annual meeting of Avis stockholders, and (ii) soliciting any proxies with respect thereto;

(3) that a preliminary and permanent injunction issue enjoining Avis from submitting the matters contained in proposals (1), (2) and (3) as contained in the Notice of Annual Meeting of Stockholders to be held May 25, 1977 to the stockholders at said meeting or at any other meeting of Avis stockholders subject to the further order of the Court; and

(4) for such other and further relief as to this Court seems just and proper.

RIBICOFF & KOTKIN

By____________________________
A Member of the Firm
Attorneys for Plaintiff Intervenor
Fuqua Industries, Inc.
799 Main Street
Hartford, Connecticut 06103
203-527-0781

OF COUNSEL:

SHEA GOULD CLIMENKO & CASEY
330 Madison Avenue
New York, New York 10017
212-661-3200

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- x

ROBERT PRATHER,

Plaintiff,

-against-

AVIS, INC., RICHARD JOYCE SMITH, DRUMMOND C. BELL, RODNEY C. GOTT, ROBERT W. HAACK, WILLIAM W. LYON, ROBERT C. O'BRIEN, ELI SHAPIRO, OLCOTT D. SMITH, WILLIAM E. FRUHAN, JR., ALVA T. BONDA, and JOHN J. SCANLON,

Defendants.

Civil Action No. 13,320

Before The Honorable
M. Joseph Blumenfeld, D. J.

- x

AFFIDAVIT

UNITED STATES OF AMERICA,

Plaintiff,

-against-

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY,

Defendants,

and

AVIS, INC.,

Defendant Intervenor.

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN J. SCANLON, being duly sworn, deposes and says:

1. I make this affidavit in opposition to the application of Fuqua Industries, Inc. ("Fuqua") to intervene in this action and for other relief and in opposition to the application of Robert Prather to enjoin Avis from soliciting proxies and from holding its forthcoming annual meeting and for other relief.

2. Besides being a Director of Avis, I was Chairman of the Ad Hoc Committee which formulated and proposed the By-law amendments which are here challenged. I am also Chairman of the Finance Committee of Avis and was formerly Executive Vice President and Chief Financial Officer of AT&T until my retirement.

3. I was approached to become a member of the Board of Avis and agreed to become one before the appointment of the Trustee. I have no role in the management of Avis. Indeed, of the 12 Directors, only one, the President and Chief Executive Officer of the Company, Mr. Colin Marshall, is part of the management.

4. The reasons why the Ad Hoc Committee proposed the challenged amendments to the By-laws and the reasons why the Board of Directors recommended these amendments may be summarized as follows:

5. We recognized that as the Trustee continued to dispose of Avis' shares in the public market, and as the number of shares held by him decreased, the Company could become an increasingly attractive target for a takeover which might well be unfair to the public shareholders. No member of the Board has the slightest desire to oppose such a transaction at a fair and reasonable price.

6. But in our judgment, and in the judgment of the financial advisors to the Trustee, the market price of Avis stock has not been reflective of its intrinsic value.

7. Part of the reason for this low price was, in our judgment, the troubled history which the Company had undergone as it emerged from ITT ownership. The capital structure of the Company as it entered an era of independent ownership was overburdened with short-term debt, and the credit crunch during 1973 and 1974 had a severe negative impact upon the earnings of the Company.

8. In addition, there was the substantial overhang of unsold stock in the Trustee's hands which sooner or later was expected to be sold to the public and which tended to have a depressing impact upon the market value of the stock. As a consequence of these depressing influences the price earnings ratio of Avis, Inc. stock has been in the 6 to 7 range

while that for the Dow Jones average is between 9 and 10.

9. In the circumstances, and fully aware of the orders of this Court directing a public sale of all of the ITT stock, it seemed to the Ad Hoc Committee that until the completion of the Trustee's program of public sale and until the market absorbed that impact, it would be desirable for the Company and its stockholders to be afforded a degree of protection against an offer hinged upon the market price of the stock, which in our view might not be fair to the public stockholders.

10. In addition, it seemed desirable to the Board to provide time to the Board and to the stockholders to appraise any offer which might be made prior to the time when the depressing influences on the stock price for Avis had been dissapated and also time to give full consideration to all available offers.

11. The Ad Hoc Committee and the Board carefully considered the full range of By-law protections that have been adopted by other corporations. The Ad Hoc Committee recommended and the Board approved what we believed to be the minimum protections necessary during this transitional period. Throughout our discussions the Board focused on the unique circumstances of

this corporation which in our judgment made these protections necessary.

12. At no time was it ever suggested that a purpose of these proposals was to protect the existing management, or to protect the Trustee in any way, or to perpetuate control of any managerial group.

John J. Scanlon

Sworn to before me this
19th day of May, 1977.

Notary Public
ANTHONY M. RADICE
Notary Public, State of New York
No. 31-8470375
Qualified in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- x

ROBERT PRATHER, :

Plaintiff, : Civil Action No. 13,320

-against- :

Before The Honorable
M. Joseph Blumenfeld, D. J.

AVIS, INC., RICHARD JOYCE SMITH, :
DRUMMOND C. BELL, RODNEY C. GOTT,
ROBERT W. HAACK, WILLIAM W. LYON, :
ROBERT C. O'BRIEN, ELI SHAPIRO,
OLCOTT D. SMITH, WILLIAM E. :
FRUHAN, JR., ALVA T. BONDA,
and JOHN J. SCANLON, :

Defendants. :

- x

AFFIDAVIT

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

INTERNATIONAL TELEPHONE AND :
TELEGRAPH CORPORATION and
THE HARTFORD FIRE INSURANCE :
COMPANY,
:
Defendants,
:
and
:
AVIS, INC.,
:
Defendant Intervenor.
:
- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ELI SHAPIRO, being duly sworn, deposes and says:

1. I make this affidavit in opposition to the application of Fuqua Industries, Inc. ("Fuqua") to intervene in this action and for other relief and in opposition to the application of Robert Prather to enjoin Avis from soliciting proxies and from holding its forthcoming annual meeting and for other relief.

2. I am a Director of Avis, Inc. I am Vice Chairman of the Travelers Insurance Company and Alfred P. Sloan Professor of Management at MIT. I am a former Chairman of the Finance Committee of Travelers.

3. The Board of Avis is an independent Board in every sense of the word. I have no role in the management of the Company and no stake in perpetuating it.

4. Nevertheless, I recognize, as the other members of the Board have recognized, that Avis has a vigorous, aggressive and effective management, which has achieved great success since Avis and its present independent Board was created. Avis' earnings have increased substantially, the value of its stock has increased substantially (from about $5 to $6 to $13 to $14 per share). The composition of Avis' debt structure has been substantially improved although the process is not yet complete. Dividends were foregone for a period in order to improve the

equity position of the Company. With the improved earnings, dividend payments have been resumed. And the Company is well on its way of becoming a strong independent force in the vehicle rental and leasing field.

5. In order to complete this program so as to bring to the public shareholders of Avis the full benefit of their investment and in order to protect the public shareholders from unfair takeovers which would deprive the shareholders of their equity, I joined with the other Directors in recommending the proposed By-law amendments.

7. The proposal recently received by the Trustee from Fuqua Industries illustrates the desirability, indeed the necessity, of these provisions.

8. Fuqua has offered $15.50 per share in cash to the Trustee for his 3,743,504 shares. Assuming acceptance of this offer, Fuqua proposed to offer unspecified securities for the 4,150,000 Avis shares held by the public at 12/31/76. Since Fuqua would control 47% of Avis' stock if the Trustee accepted Fuqua's cash offer, a favorable response from only 203,249 of the Avis shares presently held by the public would be enough to force all of Avis' public shareholders either (a) to exchange their shares for unspecified securities to a combined Avis-Fuqua entity, or (b) sell their Avis shares in the open market for cash.

9. A forced sale or exchange of their Avis stock would deny present Avis shareholders the opportunity to continue as equity holders in a firm which not only pays out a higher fraction of its earnings in dividends, but also has enjoyed a much faster rate of growth in earnings per share than Fuqua shares. For example, according to Fuqua's 1976 annual report, the total growth in earnings per share for Fuqua over the past 5 years and 9 years has been 38% and 36%, respectively. According to Avis' 1976 annual report, the growth in earnings per share for Avis over the past 5 years and 9 years has been 122% and 178%, respectively. In the first quarter of 1977, Fuqua's earnings per share increased to 37¢ from 32¢ in the same quarter of the prior year. Over this same period, Avis' earnings per share increased from 12¢ to 38¢.

10. In short, acceptance of the Fuqua offer by the Trustee may inevitably lead the remainder of Avis' present shareholders group into an investment security which they did not vote to accept, and which might be significantly less attractive to them than their present Avis shares.

11. Moreover, a merger or change in control of Avis common stock can, as pointed out in the affidavit of Mr. Marshall, if not approved by Avis' lenders, result in an Event of Default. This could potentially result in the

acceleration of most of Avis' currently outstanding debt, with significant adverse consequences to Avis' public shareholders.

12. The wisdom of providing the protection for the Company and its stockholders which the proposed By-laws would afford is demonstrated by an analysis of the Fuqua order as compared to the course of conduct which the Trustee has proposed to carry out.

13. The Avis Trustee has proposed to sell 2,000,000 of his 3,743,504 shares in a registered public offering in June 1977. Market conditions permitting, it is probable that he will offer the balance of his shares within a year thereafter. Assuming for a moment that the court would permit the Trustee to sell the Avis shares with the sole objective of maximizing the value of these shares, would the sale today of all of the Trustee's 3,743,504 shares at $15.50 be attractive?

14. Avis' stock closed at $14.00 per share on May 17, the day the registration statement was filed. Fuqua has offered a $1.50 per share premium over this price. Assume that the Trustee can realize $14.00 per share. Assume further, that a 10% return could be earned on the proceeds from any sale of stock today, what share price would have to be realized by the Trustee one year hence on the remaining 1,743,504 shares in

order to justify rejecting the Fuqua offer on purely economic grounds? It is simply (a) $15.50 per share, plus (b) 10% of $15.50 for the one-year delay, plus (c) $3,000,000 for the $1.50 per share of assumed greater proceeds foregone on the 2,000,000 shares sold at $14.00 rather than $15.50. This amounts to $18.77 per share.

15. Last year (1976), Avis earned $2.11 per share. This year (1977) security analysts have been projecting Avis' earnings per share at between $2.50 and $3.00. Earnings in the first three months of 1977 are already 26¢ ahead of last year. With this kind of earnings per share growth, it is not at all difficult to imagine a sale price exceeding $18.77 one year hence, since this is only 6.2 to 7.0 times the financial analysts earning per share projection. This being the case, the Trustee may forego little if any value on the shares sold in 1977, should he reject the Fuqua offer.

16. The anti-takeover provisions proposed in the Avis proxy statement were designed to offer Avis shareholders a measure of protection from precisely the kind of tender offer proposed by Fuqua. The opportunity for the Trustee to achieve a small premium over the May 17, 1977 market price (which may be realized absent the Fuqua offer anyway, as noted earlier) is no basis upon which to justify a potential squeeze-out of public shareholders. Indeed, the Trustee was offered similar buyout proposals two years ago at a price of between only $6.00 and $7.00 per share. Since that time Avis has made dramatic

progress as an independent public company. This progress as an independent public company should be allowed to continue as anticipated by the court's order to the Trustee dated January 14, 1976.

17. Finally, I submit that any delay in the annual meeting as a result of Fuqua's belated communication to the Trustee would be contrary to the best interests of Avis. Delay will encourage more similar offers designed to secure the advantage based upon the present market price of Avis stock, will subject Avis to speculative stories in financial journals and can only result in generating adverse publicity which will be deleterious to the public image of the Company. The Company has already suffered one suspension of trading as a result of the belated communication to the Trustee and I respectfully urge that the court should adhere to the provision of its earlier order under which the Trustee and the Company has been functioning looking to early complete public distribution of the ITT block of stock.

Eli Shapiro

Eli Shapiro

Sworn to before me this
19th day of May, 1977.

Anthony M Radice

Notary Public

ANTHONY M. RADICE
Notary Public, State of New York
No. 31-8470375
Qualified in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- x

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- : Civil Action No. 13,320

INTERNATIONAL TELEPHONE AND : Before The Honorable
TELEGRAPH CORPORATION and M. Joseph Blumenfeld, D.J.
THE HARTFORD FIRE INSURANCE :
COMPANY,
:
Defendants. **AFFIDAVIT**
:
-and-
:
AVIS, INC.,
:
Defendant-Intervenor.
:
- x
:
ROBERT PRATHER,
:
Plaintiff,
:
-against-
:
AVIS, INC., RICHARD JOYCE SMITH,
DRUMMOND C. BELL, RODNEY C. GOTT, :
ROBERT W. HAACK, WILLIAM W. LYON,
ROBERT C. O'BRIEN, ELI SHAPIRO, :
OLCOTT D. SMITH, WILLIAM E.
FRUHAN, JR., ALVA T. BONDA and :
JOHN J. SCANLON,
:
Defendants.
:
- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN P. McENROE, being duly sworn, deposes and says:

1. I am a member of the firm of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for defendant-intervenor herein,

Avis, Inc. ("Avis"). I make this affidavit in opposition to the requests for preliminary injunctions made by Fuqua Industries, Inc. ("Fuqua") and Robert Prather ("Prather").

2. Prather, a vice-president of Fuqua and a record owner of one share of Avis common stock, seeks to enjoin the Avis stockholders' meeting scheduled for May 25, 1977 solely on the grounds that the Proxy Statement is misleading. He lists six (6) respects in which he alleges the Proxy Statement to be misleading.

3. His critical allegation - echoed by Fuqua - is that the Proxy Statement is misleading because it does not disclose the Fuqua offer to purchase Avis stock made late on May 17, 1977, some 13 days after the Proxy Statement was issued. Attached hereto as Exhibit A is a copy of a Supplement to Proxy Statement (the "Supplement") mailed on May 19, 1977 to all Avis stockholders of record on the record date for the Avis Annual Meeting. The Supplement, as required by the proxy rules, was submitted by Avis to the SEC for review prior to circulation. The SEC granted accelerated clearance of the Supplement so that Avis was able immediately to mail the Supplement to its stockholders. The Supplement clearly discloses the Fuqua offer.

4. Prather also alleges that the Proxy Statement fails to disclose the compensation received by the Trustee and by the law firm of Whitman & Ransom. The compensation received through December 31, 1976 of both the Trustee and Whitman & Ransom is disclosed in the Supplement despite Avis' belief that these matters are not material because the Trustee and Whitman & Ransom are paid by ITT after Court approval and not by Avis.

5. Prather alleges (¶16 of his complaint) that the Proxy Statement does not disclose that the Trustee, as holder of 47% of the common stock of Avis, effectively controls the Board of Directors. Nonetheless, the Proxy Statement repeatedly refers to the fact that the Trustee holds 47% of the common stock of Avis and states explicitly on page 3 thereof that "The Trustee currently may be deemed to 'control' the Company within the meaning of the rules and regulations promulgated under the Securities Exchange Act of 1934, as amended." Accordingly, Avis believes that the relationships between the Company and the Trustee are adequately disclosed through the information provided in the original Proxy Statement and so states in the Supplement.

6. Finally, Prather alleges in paragraphs 17, 18 and 19 of the complaint that the language in the Proxy Statement that proposals 2 and 3 "could deter a change in management," and "could...discourage," tender offers is misleading and should read "will deter" and "will discourage." These allegations are entirely misplaced. The statements as to the effect of proposals 2 and 3 at the time the statements were made could, at best, only be speculative. Avis could not and did not know for a certainty what effect the proposals would have on all possible suitors because it does not control them. Nor need all suitors be similarly motivated. Thus Avis could not properly say that these proposals will deter and will discourage. Fuqua has, however, indicated that it will not proceed with its proposed purchase of the Trustee's shares of Avis if proposals 2 and 3 are approved at the Annual Meeting and a statement to that effect has been inserted into the Supplement. Avis believes, and so states in the Supplement, that the Proxy Statement adequately discloses the likely effects of adoption of the proposals.

7. Accordingly, the disclosures sought by Prather have now been made in the Supplement and circulated to Avis stockholders prior to the Annual Meeting. Thus, when the stockholders meet on May 25, they will have had before them the information necessary to decide whether or not to approve the proposed amendments of Avis' Certificate of Incorporation and By-Laws.

John P. McEnroe
John P. McEnroe

Sworn to before me this
20th day of May, 1977.

Jean M. Trotta
Notary Public

JEAN M. TROTTA
Notary Public, State of New York
No. 41-4605726
Qualified in Nassau County
Commission Expires March 30, 1979

MC ENROE AFFIDAVIT
53a

AVIS, INC.

WORLD HEADQUARTERS
900 Old Country Road
Garden City, New York 11530

SUPPLEMENT TO PROXY STATEMENT

Dated May 4, 1977

ANNUAL MEETING OF STOCKHOLDERS

May 25, 1977

This supplement is to advise you of events subsequent to the mailing to stockholders of proxy material with respect to the Company's Annual Meeting of Stockholders to be held May 25, 1977.

Late on May 17, 1977, Richard Joyce Smith, as Trustee (the "Trustee") appointed by the United States District Court for the District of Connecticut (the "Court") pursuant to the terms of a consent decree entered in *United States of America v. International Telephone and Telegraph Corporation and The Hartford Fire Insurance Company and Avis, Inc.* (the "Action"), received an offer on behalf of Fuqua Industries, Inc. ("Fuqua"), pursuant to which Fuqua offered to purchase from the Trustee the 3,743,504 shares of the Common Stock of the Company held by him for a cash purchase price of $15.50 per share. The cash offer extends only to shares held by the Trustee. In a subsequent press release Fuqua stated that, if Fuqua should acquire the Trustee's shares, its intention is to propose to the other Avis stockholders a merger of Fuqua and Avis. In an affidavit filed with the Court, Fuqua's general counsel indicated that the transaction to be proposed to such stockholders would be tax-free and would involve consideration per share at least equivalent in value to that offered the Trustee. Fuqua's proposal to the Trustee stated that Fuqua would not be interested in purchasing the Trustee's shares should the stockholders of the Company approve at the Annual Meeting the amendments to the Company's Certificate of Incorporation and By-laws set forth in the Proxy Statement previously mailed to stockholders.

The Trustee advised Fuqua's representatives on May 18, 1977 that, by a previous order of the Court, he has been instructed to distribute the Avis Common Stock held by him through a series of public offerings continuing from time to time at such intervals and in such amounts as the Trustee and his financial advisors find to be appropriate and in the best interests of the Company and all of its stockholders; that the Company on May 17 filed with the Securities and Exchange Commission a Registration Statement relating to a proposed sale by the Trustee of 2,000,000 shares of the Common

Stock of Avis held by him in a public distribution now scheduled for some time in June 1977; and that, unless otherwise ordered by the Court, he intends to proceed with that proposed sale.

The Trustee further advised Fuqua that he will not request the Board of Directors of the Company to delay the forthcoming Annual Meeting of Stockholders and that, unless otherwise directed by the Court, he intends to vote his shares in favor of the proposed amendments, as stated in the proxy material previously furnished stockholders.

Fuqua has moved to intervene in the Action to seek an injunction against the Trustee and Avis barring them from voting any shares at the Annual Meeting of Stockholders and enjoining the holding of such meeting until further order of the Court. In addition, a stockholder of the Company has commenced an action in the Court seeking similar relief, alleging that the Proxy Statement mailed to stockholders in connection with the Annual Meeting of Stockholders contains material misrepresentations and omissions in that, among other things, it fails to describe the offer subsequently made by Fuqua to the Trustee, fails to disclose that such offer and a possible subsequent tax-free transaction between Fuqua and the public stockholders will be discouraged by the proposed amendments to the Company's Certificate of Incorporation and By-laws, fails to disclose that the Trustee, as holder of 47% of the outstanding Common Stock of the Company, effectively controls the Board of Directors, and fails to disclose the amount of fees being received by Mr. Smith as Trustee and by the law firm of Whitman & Ransom (of which Mr. Smith and Mr. Robert C. O'Brien, who is also a director of the Company, are partners) as counsel to the Trustee. On May 18, 1977 the Court issued orders to show cause in the proceeding to intervene and in the stockholder's action returnable at a hearing on Monday, May 23, 1977.

While it is impossible to predict the outcome of such hearing or whether the Fuqua offer may be amended or other offers will be forthcoming, the Company and the Trustee continue to believe that the amendments to the Company's Certificate of Incorporation and By-laws proposed in the original Proxy Statement are in the best interests of the Company and its stockholders and should be approved at the Annual Meeting. The Company and the Trustee intend to resist any efforts to postpone the meeting.

The Company believes that the Proxy Statement adequately discloses the likely effects of adoption of the proposals described therein and the existing relationships between the Trustee and the Company. The Company further believes that the amounts of fees received by the Trustee and his counsel are immaterial to consideration of the matters to be acted upon at the meeting. In view of the request in the Court papers that such information be made available, however, it is furnished herewith. All such fees have been paid by International Telephone and Telegraph Corporation after approval by the Court, and all are a matter of public record. For services as Trustee during the period from his appointment on January 6, 1975 through December 31, 1976 the Trustee received fees of $100,000, and Whitman & Ransom received fees of $220,000. In addition, Mr. Smith and Mr. O'Brien, as well as the other directors, receive fees from the Company for serving as directors and members of committees of the Board, as reflected in the Proxy Statement previously sent to stockholders, and Whitman & Ransom has been reimbursed by International Telephone and Telegraph Corporation for out-of-pocket disbursements aggregating less than $10,000.

Stockholders are urged to sign and return their proxy. The Board of Directors recommends that stockholders vote for the management nominees for election as directors, and for Items Nos. 2, 3 and 4 described in the Proxy Statement. For stockholders' convenience, another copy of the form of proxy is enclosed. Please note that stockholders may sign and return this form of proxy even if they have previously signed and returned another proxy. The last dated and signed proxy received will be used to determine a stockholder's vote. Stockholders are urged to return their executed proxy card immediately to ensure its being received in time to be counted. Any stockholder may revoke his proxy by giving written notice to the Secretary of the Company reasonably in advance of the meeting or by attending the meeting and personally voting his shares.

DAVID I. SCHAFFER
Secretary

Dated: May 19, 1977

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- -x

UNITED STATES OF AMERICA, :

Plaintiff,
: Civil Action No. 13,320

-against-

INTERNATIONAL TELEPHONE AND :
TELEGRAPH CORPORATION and Before the Honorable
THE HARTFORD FIRE INSURANCE M. Joseph Blumenfeld, D.J.
COMPANY, :

Defendants. : **AFFIDAVIT**

and

AVIS, INC., :

Defendant, Intervenor.
:
- -

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

COLIN M. MARSHALL, being duly sworn, deposes and says:

1. I am President and Chief Executive Officer and a Director of Avis, Inc. ("Avis"). I make this affidavit in opposition to the order to show cause and proposed complaint of Fuqua Industries, Inc. ("Fuqua").

2. The relief sought by complainant would be a disaster for both Avis and its stockholders. Should Avis cease to be a publicly-held independent company or fall under the control of either Fuqua or anyone else, Avis would suffer severe reversals. It would have difficulty in keeping intact the young management team that it has carefully put together over the past few years; its common stock would in

all probability be delisted -- trapping stockholders in an illiquid position; its licensee operations would be stunted; numerous business opportunities would be lost; the availability of more than $400,000,000 in essential financing would be jeopardized; and the entire forward movement which Avis has been able to achieve over the past few years with its independent leadership would be slowed in the face of new uncertainties occasioned by a takeover.

Historical Background

3. To understand the impact a takeover would have on Avis, it is necessary to briefly review the present corporate history of Avis.

With the commencement of divestiture by ITT in 1971, Avis began to attract its own management team and establish its own independent Board of Directors who were all committed to only one goal -- the growth and success of Avis. Under this new leadership, Avis gained momentum in the industry, and established itself as a successful independent company.

4. Nonetheless, in 1974, Avis suffered a serious setback occasioned in large part by the possibility that outside ownership would again control Avis. In 1974, ITT attempted to divest itself of its remaining shares in Avis through private offerings. During this entire period, as the company was being "shopped around," the Avis management was never free to focus on Avis business. Instead, an inordinate amount of time was spent merely providing prospective purchasers with information on the company. Key employees who had taken positions with the company in the expectation that

Avis would be 100% publicly-held, became disspirited. There was a constant fear that Avis would be acquired by a company that knew nothing about the vehicle rental business and that the company's potential growth would again be injured.

5. This uncertainty in 1974 contributed substantially to Avis' worst year since 1969.

6. In 1975, however, after the court appointed a Trustee, and the Trustee announced that he would not entertain any private offers for a period of one year, the management and employees of Avis were again able to turn their attention back to business. Profits for that year soared, doubling from five to ten million dollars.

7. I have been informed by the Trustee that he has over the past years received numerous private inquiries regarding the purchase of the Avis stock which he possesses. He has told me that if he were compelled to consider the Fuqua proposal, he would feel it necessary once again to check with these potential purchasers in an attempt to obtain the best offer. Should this happen, Avis would once again be on the block, and the problems from which it suffered in 1974 could well be inflicted upon it again.

Essential Financing would be Jeopardized

8. Were any person to acquire more than 50% of Avis stock or were Avis to be merged into another company, more than $400,000,000 in financing presently available to Avis would be jeopardized.

9. Financing is provided to Avis through various agreements. Among them are a Revolving Credit Agreement for

$150,000,000 with Irving Trust Company and 31 other banks for which Irving Trust Company acts as agent; note agreements with five insurance companies totalling $27,000,000; and various agreements for short-term and intermediate term loans.

10. These agreements require Avis to comply with certain covenants relating to its financial condition and operations. Covenants in one or more of the above require that Avis not be merged into any other company without the consent of the lenders. In addition, the Revolving Credit Agreement and certain of the intermediate debt agreements specify that the acquisition of more than 50% of the common stock of Avis by any one person or any affiliated group of persons (other than the Trustee) -- which is contemplated by the Fuqua proposal -- will constitute an event of default permitting the lenders to terminate these agreements and declare all outstanding loans immediately due and payable. These covenants and provisions were inserted upon the insistence of these lenders.

11. I have been informed by Mr. Charles Douglas of the Irving Trust Company that were more than 50% of Avis stock acquired by one person, Irving Trust would surely review the financial condition of the acquirer, and unless the acquiring party had a particularly strong financial posture and record of performance, would very likely seek to terminate the Revolving Credit Agreement. In the limited time available, I have briefly examined Fuqua's financial statements and record of performance and they are, in my view, and I believe in any

impartial view, weak and spotty, so that the risk of termination is great.

12. Finally, under the terms of the note agreement with the insurance companies, should the Revolving Credit Agreement be terminated, Avis could not issue commerical paper in the United States without bringing about an event of default under the note agreement. Indeed, even were Avis willing to incur such an event of default, it could not as a practical matter issue commercial paper in the absence of a revolving credit agreement since no sophisticated investor would purchase such paper.

13. The foregoing defaults would inevitably jeopardize the availability of the Company's remaining credit arrangements.

Impact Upon Public Stockholders

14. If more than 10% of Avis' stock were to be acquired by any one person - certainly the result here - the likelihood is great that the New York Stock Exchange would delist all Avis stock and refuse to provide listing for any new shares. Indeed, since the first offering of Avis common stock by ITT in 1972, the Exchange has made it clear that it may delist Avis stock or refuse to list additional shares of Avis common stock if more than 10% of the stock were placed in the hands of an individual corporation or affiliate group (with the exception of the Trustee).

15. The effect of such a delisting on Avis shareholders would be enormous. Shareholders would be left with but two choices. Either to sell to the new controlling shareholder or attempt to trade their stock over the counter,

a market which is perceived as being far less liquid than the Exchange. In either circumstance, stockholders would lose, for instead of being part of a public company whose stock would be actively traded over the Exchange, they would be left with limited options, all far less profitable.

16. Delisting would also have a negative impact on both management and Avis' licensees. Many of top management receive compensation through stock option plans. The value of these plans would obviously diminish as the value of the stock declined. Similarly, many of Avis' licensees are shareholders, and their commitment could only be affected by the diminution in value of the stock they hold.

17. In addition, since public stockholders acquired their stock under the expectation, based upon ITT's representations, that no more than 10% of the ITT block of Avis stock would be disposed of to any single shareholder, a sale of a 47% block to anyone would be very likely to stimulate litigation which would be time consuming and costly to Avis.

Impact Upon Licensees

18. A substantial part of the business of Avis is conducted by licensees -- some 30%. They are an integral part of the Avis system and help provide Avis with the worldwide coverage which has contributed so much to its growth.

19. A close working relationship with licensees is essential to the success of Avis' business. The Chairman of the Committee representing the U.S. licensees, Mr. Orval Story, is not available to execute an affidavit at such short notice.

On Thursday, May 19, he was attending a combined licensee-licensor meeting in Wisconsin and returned to his home in El Paso on Thursday night.

20. He will be available if needed in Court on Monday, May 23, to confirm the following statements.

21. On behalf of the licensees, Mr. Story states that a sale of the 47% interest now held by the Trustee to a single purchaser, whether or not followed by a merger, would have a devastating impact upon the presently excellent relationship between Avis and its licensees. According to Mr. Story, the licensees have seen what happens when Avis is run as an adjunct of some other entity -- as in the ITT days -- whose principal interest is not the growth and development of the rental business and they did not like it. In these circumstances, from the point of view of licensees, executives whose principal interest is not vehicle rental can influence decisions, which affect the licensees, for business purposes other than advancing the mutual interest of the licensees and Avis. A vehicle rental system such as Avis thrives best when its management is devoting its full attention and commitment to the rental business and not to pursuing other objectives.

22. Mr. Story has advised me that, in the view of the licensees, the relationship between the licensees and Avis has never been better than in the last two years when Avis has been operating under independent management, and that the licensees would regard the sale of control of Avis to a single stockholder as contrary to their interests and to their joint interest with Avis in the Avis system.

It would be a step backwards which would tend to diminish the devotion and enthusiasm of [illegible] and thus, in turn, diminish the competitive effectiveness of Avis.

The Loss of Potential Business

23. Avis would lose significant present business and potential business should it cease to be independent. Indeed, its independence gives it a distinct competitive advantage over the other rent a car companies.

24. Many customers will not do business with our competitors because our competitors are owned by companies which compete in other fields with those customers. With our independent ownership such conflicts do not arise, and we are therefore able to do business with anyone. Should we lose this independence, we would suffer a loss of business.

The Impact Upon the Management of Avis

25. Should Avis lose its independence, the effect on the management of Avis would be a disaster. For the past five and a half years, Avis has put together a young, vigorous, enthusiastic management team. That team has caused Avis to become the largest rent a car system in the world. The December 31, 1976 10-K reports filed by Avis and Hertz show that Avis now substantially surpasses Hertz in number of cars. In turn, this growth has resulted in increased profitability and a substantial increase in the value of stockholders' equity.

26. Avis would find it extremely difficult to retain this management intact were it to cease being a publicly-held company. A major factor in Avis' ability to attract and hold the management team has been Avis' status as an independent company. If the Company were to fall into the hands of owners who knew nothing about the rental business

the impact could only be negative, and the vagaries posed by a new corporate structure and new ownership would be unfortunate.

27. In addition, many of the management team participate in various compensation plans including stock option plans. To the extent that a new majority shareholder could decide to amend these plans, and to the extent that the value of the stock option plans would be severely jeopardized (as described above) there would be a deleterious impact both on present management and upon the ability to attract young new management.

28. A takeover of Avis could also wreak havoc among our foreign management. Our management team outside the United States is the most experienced in the world, sought after by all of our major competitors. The uncertainty generated by a takeover of Avis in the minds of these executives could not but have an adverse impact on Avis' business.

The Delay of the Stockholders' Meeting would have a Deleterious Effect on Avis' Management Operations

29. This Court directed the public sale of Avis' stock on January 14, 1976. Over a year later, on May 4, 1977, Avis circulated its proxy statement announcing the proposed amendments to its Certificate of Incorporation and By-Laws.

30. As a sophisticated company now willing to spend more than $58 million to acquire Avis stock, Fuqua was undoubtedly aware of these events. Yet it waited until late on May 17, 1977 to deliver its proposal dated May 16 to buy Avis stock. Had Fuqua made its proposal at any time during the past year and a half, the shareholders of Avis, the Trustee and the Court would have had ample time to consider it. More-

over, even if the proposal had come promptly after May 4, Avis would have had more time to circulate supplemental proxy material - material which it has at great expense and effort nonetheless circulated prior to the stockholders' meeting.

31. Fuqua's attempt to now enjoin our stockholder's meeting -- in the face of its own history of delay -- would be severely disruptive of our corporate affairs. During the week of May 30, Avis has scheduled a series of meetings in Europe dealing with its international operations which more than 700 people will attend. The principal meeting was set up more than two years ago. It is essential that Avis' Senior Management participate. The cost of delaying and rescheduling these meetings would be enormous. Yet Avis' key officials obviously cannot leave for Europe while the issue of the stockholders' meeting remains unresolved and while the meeting itself might be rescheduled for any time.

32. In addition, any delay in the stockholders' meeting would create another period of uncertainty similar to that of 1974 and again divert the management of the company away from the operation of the business.

Colin M. Marshall

Sworn to before me this
20th day of May, 1977.

Dorothy A. Cox
Notary Public

DOROTHY A. COX
Notary Public, State of New York
No. 41-5841125
Qualified in Queens County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICT

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UNITED STATES OF AMERICA,
Plaintiff,
-against-
INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION AND THE HARTFORD FIRE INSURANCE COMPANY,
Defendants,
and
AVIS, INC.,
Defendant Intervenor.

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Civil Action No. 13,320

Before The Honorable
M. Joseph Blumenfeld, D.J.

AFFIDAVIT IN OPPOSITION TO MOTION OF FUQUA INDUSTRIES, INC. TO INTERVENE AND FOR INJUNCTION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RICHARD JOYCE SMITH, being duly sworn, deposes and says:

1. I am the Trustee appointed by the United States District Court of the District of Connecticut on January 6, 1975 to manage and dispose of International Telephone and Telegraph Corporation's ("ITT") undivested interest in Avis, Inc. ("Avis") and its subsidiaries and I am familiar with all the facts and matters involved in this proceeding.

2. Trustee Order No. 1, which appointed me as Trustee, directed ITT to irrevocably convey its undivested interest in Avis and its subsidiaries to me and to effect the resignation of all ITT personnel from the Board of Directors of Avis. That order directed that "[u]ntil the consummation of a plan of divestiture hereunder the Trustee shall vote the Avis stock held by him at his discretion, having in mind the best interests of the shareholders of Avis in their capacity as such."

3. Trustee Order No. 1 also directed me to consider a possible disposition of ITT's undivested interest by way of an exchange offer of shares of Avis held by ITT for outstanding securities of ITT (the "Exchange Plan") and to report my findings within thirty (30) days. I was also directed by that order to study alternative methods of disposition of the Trust Property taking into account the present financial condition of Avis and its continued viability and to report my recommendations for a plan of disposition within sixty (60) days.

4. Immediately following the receipt of the order, I took steps to obtain possession of the Certificates representing 3,100,000 shares of Common Stock of Avis and 50 000 [illegible] of the Series A Preferred Stock of Avis held by ITT and, [illegible]upon, I took the necessary steps to have such shares registered in my name and the Certificates deposited for safekeeping at Morgan Guaranty Trust Company of New York, 522 Fifth Avenue, New York, New York 10036 (the "Trust Property").

admission that people on board are his nominees

5. I took the necessary steps to obtain the resignations of all ITT officers who were then serving as directors of Avis and all other directors of Avis who were associated with investment banking firms representing ITT. I thereupon reported to the Court on February 4, 1975 that, by virtue of the transfer of approximately 52% of the voting securities of Avis to me and the reorganization of the Board of Directors of Avis, the control of ITT had ceased.

6. Immediately following my appointment, I commenced a detailed investigation of the operations and financial conditions of Avis together with my financial advisors, Raymond S. Troubh of New York City and Ora C. Roehl of Boston, Massachusetts and my counsel, Whitman & Ransom of New York City, of which I am

a partner. On the basis of the studies undertaken, I concluded that a disposition of Avis shares by way of an exchange of these shares for shares of ITT was not feasible at that time and I reported this to the Court in the Trustee's First Report Pursuant to Trustee Order No. 1.

7. Thereupon, I began, with the assistance of my financial advisors and attorneys, a complete study of the other alternative methods of disposition of the Trust Property taking into consideration the then existing financial condition of Avis and its continued viability.

8. It became clear to me that additional equity capital was urgently needed by Avis and to provide that I undertook to settle a controversy over the obligations of ITT pursuant to an agreement made in August 1974 to provide $17,295,000 in cash for 1,487,000 shares of newly issued Avis Common Stock. I concluded that a public sale of the Trust Property under then existing economic conditions, without first strengthening the financial condition of Avis, would be difficult, if not impossible, except on so drastic a give away basis as to ruin the market for Avis stock with consequent serious loss to the public shareholders of Avis and damage to its financial standing.

Trustee spent month in Europe

Even amendment does not disclose this

9. I thereupon recommended to the Court on March 3, 1975 in the Trustee's Second Report Pursuant to Trustee Order No. 1, a program including the following:

> "(a) Subject to the approval of this Court and the newly organized independent Board of Directors of Avis, Inc., International Telephone and Telegraph Corporation (ITT) shall promptly subscribe to and pay in cash $17,295,000 for 1,487,000 shares of newly issued shares of Avis common stock. Upon issuance of those shares to it, ITT shall promptly transfer them to me as Trustee to be added to the shares held by me and to be subject in all respects to the underlying Consent Decree and Trustee Order No. 1 of this Court. The undertaking of ITT to purchase the additional shares is stated in a letter dated February 21, 1975 addressed to me by Lyman C.

Last year did disclose here

> Hamilton, Jr., Executive Vice President and Treasurer of ITT,. . . .
>
> "(b) In the absence of drastically changed conditions and circumstances in the interim, I shall not, unless so ordered by this Court, undertake a public sale or sales of the Avis shares in the Trust until after a full year's operation of Avis under the newly constituted Avis Board of Directors which is now completely independent of and beyond the control of ITT. That independent operation began with the first meeting of the newly constituted Avis Board held on January 15, 1975.
>
> "(c) In the absence of drastically changed conditions and circumstances, I shall not, unless so ordered by this Court, during the twelve-month period which began on January 15, 1975 accept any private offer for the Avis shares held in the Trust at a price less than $11.63 per share (the price per share to be paid by ITT for the newly issued Avis shares)."

Copy of Trustee's Second Report Pursuant to Trustee Order No. 1 is annexed hereto as Exhibit A.

10. After a hearing before the Court on March 6, 1975, this program was approved. I thereupon proceeded to carry out this program.

11. During the remainder of 1975, I reviewed the various private offers presented to me and responded to any responsible inquiries with respect to the purchase of the Trust Property. After consultation with my financial advisors and attorneys thereon, I concluded at the end of 1975 that no responsible firm offer for the purchase of the Trust Property had been received or was before me.

12. In the fall of 1975, I directed my counsel and financial advisors to consult with six major investment bankers and to receive from them reports regarding the disposition of the Trust Property. My financial advisors reported to me that as a result of these reports, in their opinion, the Trust Property should be disposed of in a series of public offerings commencing in 1976, subject to market conditions existent at the time of said offerings.

13. In January 1976, I requested that the Court approve such a program whereby I would commence a series of public offerings of the Trust Property to be preceded by the exchange of the Avis Preferred Stock held by me at the per share book value of Avis Common Stock as of December 31, 1975.

14. After a hearing on this matter on January 14, 1976, the Court in Trustee Order No. 3, a copy of which is annexed hereto as Exhibit B, ordered me to exchange the Avis Preferred Stock held by me into Avis Common Stock and to

> "begin the disposition of the Trust Property by way of a series of public offerings beginning in the first half of 1976 and continuing from time to time thereafter at such intervals and in such amounts as the Trustee and his financial advisers shall find to be appropriate under all the circumstances and in the best interests of Avis and all its shareholders; provided, however, that for a period of two years, beginning December 31, 1975, the Trustee shall not sell any Common Stock of Avis received in exchange for the Avis Preferred Stock for an amount less than the book value of said Common Stock at December 31, 1975."

15. Shortly thereafter, I engaged three investment banking firms to act as underwriters with respect to the first public offering of the Trust Property advising them that I was bound by the order of January 14, 1976 to make a series of public offerings of the Trust Property.

16. I directed my staff to communicate with New York Stock Exchange officials concerning the listing of the shares to be sold by me and I advised the Exchange that it was my intention to comply with the undertaking by ITT when it made the first public offering of its Avis shares and that I would use my best efforts to see that no individual, corporation or affiliated group would acquire more than 10% of the Company's outstanding shares. I was advised by the Exchange that should more than 10%

of the Company's outstanding Common Stock be placed in the hands of an individual, corporation or affiliated group, the Exchange might refuse to list additional shares of Avis Common Stock or might consider delisting the Avis Common Stock.

17. On May 27, 1976, pursuant to a Registration Statement filed with the Securities and Exchange Commission (No.2-56164) I sold 1,250,000 shares of Avis Common Stock held by me through a group of underwriters headed by Goldman, Sachs & Co., Dillon, Read & Co. Inc., and Kidder, Peabody & Co. Incorporated at a price of $9.25 per share. Thereupon, my holdings of Avis were reduced to 47% of the outstanding voting securities.

18. In the Registration Statement covering the sale of those shares the following representation was made:

> ". . . Avis has been advised by the Trustee that the Trustee intends to dispose of the shares of Common Stock to be held by him after the sale of the shares offered hereby by means of additional underwritten public offerings from time to time. However, there can be no assurance that the Trustee might not determine to dispose of such shares by private sales or otherwise pursuant to further orders of the Court. . . ."

19. At the July 1976 meeting of the Finance Committee of Avis, of which I am a member, I reported on the first public offering of the Trust Property and advised the Committee that it was my intention to proceed with a second offering as soon as practicable in 1977 which would bring my holdings below 30% of the outstanding stock of Avis. I suggested at that time that the Committee should consider the implementation of procedures designed to insure that the Company remain an independent public entity following that next sale. I advised the Committee that it had been my experience in the practice of corporate law that companies in a transitional period such as Avis were especially vulnerable to corporate raiders who purchase a minority position

in the company and attempt to force the remaining shareholders into a disadvantageous merger in exchange for securities of questionable investment quality. I suggested that the Avis Board of Directors should protect the shareholders by insuring that any offer of merger or acquisition should be first analyzed and approved by the Board.

20. I requested shortly thereafter that my financial advisors make a study of this question and advise me as to the advisability of recommending the implementation of such protective measures to the Board of Directors of Avis.

21. On December 15, 1976, I received a memorandum from my financial advisors advising me that I should continue my program of public offerings stating in part:

> "We have previously advised you that we believe the prudent course for you, as Trustee, to follow is to periodically sell Avis shares in the public market in underwritten offerings. We have felt this course of action would cause the least disruption of an orderly market in the shares, would be constructive from the point of view of Avis management, and generally would be in the best interests of Avis and its shareholders. We continue to believe that under current market, economic and monetary circumstances, and with due consideration for the operations of the company, a final single sale of all the Trustee's shares at one time would not be in the best interests of shareholders and would most likely not bring in full value for the shares."

22. Concerning the question of protective measures my advisors stated:

> "We have commented before on your expressed obligation to promote a viable and independent Avis. To preserve that independence, we believe that Avis should take steps to strengthen its charter and by-law provisions against hostile takeovers. This is not uncommon in American industry today and dozens of cases can be cited of companies creating staggered boards, providing for cumulative voting and requiring large percentage votes for merger that the Board does not approve. Avis has an outstanding outside working Board of Directors which has worked successfully

> with you to give Avis a rebirth. Adoption of the suggested charter reforms will enhance these efforts, still allow them to consider bona fide offers that they deem worthy of consideration, and, in our judgment, redound to the ultimate benefit of shareholders."

23. Concerning the timing of the next offering, my advisors recommended that disposition of the Avis shares through an underwritten public sale during the late spring or summer of 1977, in an amount representing approximately one-half of the Trustee's present holdings, subsequent to the release of audited Avis financial statements for 1976 and after the 1977 Annual Meeting, would be appropriate, assuming favorable economic and market conditions and the continuation of present trends in Avis.

24. At the Board of Directors' meeting held on January 25, 1977, I advised the Board of Directors of Avis of my intention to make a second public offering of the Trust Property shares around mid-year and recommended to the Board that the Board consider the implementation of measures to protect Avis against undesirable attempts by others to acquire control of Avis. After a discussion, the Board of Directors established an Ad Hoc Committee consisting of Messrs. John J. Scanlon, Robert W. Haack and Robert C. O'Brien to evaluate the question and report back to the Board.

25. On February 18, 1977, representatives of the United States Department of Justice met with me, my financial advisors and my counsel to discuss the memorandum of my financial advisors dated December 15, 1976, particularly with respect to the adoption of the protective measures and were fully briefed on my position with respect thereto. After consideration, the Justice Department representatives requested that prior to voting my shares on the protective measures, I seek the advice of the Court. I agreed to this procedure.

26. At the Board of Directors' meeting held on February 22, 1977, the Ad Hoc Committee reported to the Board that it had held discussions with investment bankers, lawyers and financial consultants on the subject of protective measures. The Committee reported that it had been advised by several investment bankers that Avis was a "target" company and that several so-called corporate "raiders" might be waiting for the Trustee to dispose of sufficient stock to enable them to make their move against the Company. It was their conclusion that in order to protect against this situation it was appropriate for the Board of Directors to adopt proposals to amend the By-laws to provide for classification of directors, removal of directors only for cause, a majority requirement for directors, amendment of the Certificate of Incorporation to require a special director or shareholder vote for certain mergers, consolidations, and similar transactions and for any alteration or appeal of such provisions.

27. At a meeting of security analysts held on March 24, 1977, it was announced that the Trustee was adhering to his plan for the public distribution of the shares and that his next offering of approximately one-half of his shares would be in June 1977, provided that market conditions were favorable. This information was reported the next day in the Wall Street Journal.

28. On April 20, 1977, I submitted Trustee's Fourth Report Pursuant to Trustee Order No. 1 to the Court attaching a copy of the proposed letter to the Avis shareholders from Colin M. Marshall, President and Chief Executive Officer and the proposed Notice of Annual Meeting and Proxy Statement in connection with the forthcoming Annual Meeting of Stockholders for 1977, requesting that the Court approve my voting in favor of Items (2) and (3) described in the Notice of Annual Meeting and Proxy Statement of Avis, which provide for amendments to the By-laws and Certificate of Incorporation. Items (2) and (3) are intended, in

general, to make more difficult and therefore discourage attempts by others to acquire control of Avis through acquisitions of stock or otherwise in transactions not approved by Avis's Board of Directors. In this Report, I stated:

> "From my prior experience in the field of corporate law and in view of the transitional period required to establish Avis as a publicly held independent enterprise, I am of the opinion that the protective measures proposed by the Avis Management are in the best interests of Avis and its stockholders. None of the proposed measures would relieve the Board of Directors of Avis of the responsibility to submit to stockholders of Avis any bona fide proposal by responsible and qualified interests to acquire the company on a basis deemed by the Avis Board to be fair and equitable to the Avis stockholders."

29. On April 28, 1977, the Department of Justice advised me that it intended to take no position with respect to the manner in which I vote my shares on Items (2) and (3).

30. On April 29, 1977, I was advised by representatives of ITT that while they do not intend in any way to influence my judgment, they will interpose no objection to my proposal to vote the Avis shares in favor of the adoption of the protective measures.

31. On May 3, 1977, the Court issued Trustee Order No. 5 finding that "it is within the discretion of the Trustee to vote his Avis shares in favor of Items (2) and (3) which are being submitted for stockholder consideration at the forthcoming 1977 Annual Meeting of Stockholders of Avis and otherwise at his discretion, having in mind the best interests of the stockholders of Avis in their capacity as such."

32. The Avis Proxy Soliciting Material was mailed to shareholders on May 4, 1977. The material stated in pertinent part as follows:

> "The Company has been advised by the

> Trustee that he currently intends to dispose of the remaining common stock of the Company held by him (other than any shares sold pursuant to the ITT Incentive Plan described under 'Certain Transactions--ITT Incentive Plan') by means of additional public offerings from time to time. The Court's order of April 23, 1976 incorporates an agreement between ITT and the Trustee that the Trustee will not until after December 31, 1977 dispose of any of the common stock received in exchange for Series A Preferred Stock for a price per share less than the $12.30 a share exchange price therefor. There can be no assurance that the Trustee might not determine to dispose of part or all of the common stock held by him by private sales or otherwise pursuant to further orders of the Court.
>
> * * * * *
>
> ". . . At a meeting of the Finance Committee of the Board of Directors in July 1976, the Trustee suggested that the Company consider implementing, prior to the Trustee's next disposition of shares, procedures designed to discourage and make more difficult unfriendly takeover attempts, in order to help insure that the Company will remain an independent public entity for a reasonable period of time following his sale of the Company's stock. After consultation with management and upon the recommendation of a committee of directors who studied the matter, the Board of Directors determined that it is desirable to protect the Company by provisions of the type proposed herein against the threat of a takeover attempt which the Board may consider to be not in the best interests of the Company and its stockholders, during and following the Company's transition to complete public ownership. The proposed amendments of the Company's Certificate of Incorporation and By-laws are intended, in general, to make more difficult, and therefore discourage, attempts by others to acquire control of the Company, through acquisitions of stock or otherwise, in transactions not approved by the Company's Board of Directors. Neither the Company nor the Trustee is aware of any pending or proposed transaction that would be affected by the proposed amendments."

33. On May 13, 1977, I was advised by my attorneys that the preparation and due diligence with respect to the proposed registration of 2 million of the Trust Property shares had been completed and that Avis was prepared to file the registration statement for the registration of the 2 million shares of the Trust Property on May 17, 1977. I directed my counsel to proceed on that schedule and, accordingly, on May 17, 1977, the

Registration Statement (No. 2-59039) was filed with the Securities and Exchange Commission in Washington, D.C.

34. On May 17, 1977, at approximately 5:00 P.M., a letter dated May 16, 1977 from the law firm of Shea, Gould, Climenko & Casey on behalf of Fuqua Industries, Inc. (the "Fuqua Letter"), a copy of which is annexed hereto as Exhibit C, was delivered to my office by hand in my absence. I first saw the Fuqua Letter when I arrived at my office at 9:00 A.M. on May 18, 1977. The Fuqua Letter provides in substance that Fuqua intends to make an offer to purchase the entire Trust Property for $15.50 per share to be paid in cash. The Fuqua Letter also stated that in light of that offer, the proxy material for the Annual Meeting of Stockholders should be updated and the Annual Meeting should be delayed.

35. On the morning of May 18, 1977, after consultation with my financial advisors and my attorneys, I prepared a response to the Fuqua Letter and delivered by hand my response dated May 18, 1977 to Milton S. Gould, Esq., Shea, Gould, Climenko & Casey, 330 Madison Avenue, New York, New York 10017 at 12:00 Noon on May 18, 1977, a copy of which is annexed hereto as Exhibit D (the "Trustee's Letter"). My letter provided in substance that I am continuing my program for the public distribution of the Trust Property as directed by this Court.

36. On the afternoon of May 18, 1977, I received unsigned and incomplete copies of both of the Orders to Show Cause and supporting papers which are before this Court. I was served with signed copies of those orders on May 19, 1977.

37. Having reviewed the documents submitted by Fuqua Industries, Inc. and its counsel and having consulted with my financial advisors and attorneys, I find no basis on which to

recommend to the Court any change in the program that I am carrying out pursuant to the Order of this Court with respect to the Trust Property.

38. The concept and program for public distribution of the Avis shares was not originated by the Trustee and his advisors. Rather, this program was begun by ITT in June 1972 with a public offering of 1,400,000 shares of Avis Common Stock pursuant to a Registration Statement (No. 2-44372) and continued with a public offering of 1,500,000 shares of Avis Common Stock in January 1973 pursuant to a Registration Statement (No. 2-46706).

39. Shareholders who purchased their shares pursuant to the two ITT Registered Offerings and those who purchased pursuant to my first registered offering of 1,250,000 shares of Avis Common Stock were advised of the intention of ITT in the first two instances and myself in the third, to dispose of the Avis shares pursuant to a series of public offerings.

40. My second offering of 2,000,000 shares of Avis Common Stock, which has been scheduled since the completion of my first offering in May 1976 and publicly announced in March 1977, has already been filed with the Securities and Exchange Commission for an expected offering date of mid-June 1977. It would be unfair at this late hour to the outstanding shareholders of Avis to change my program of public distributions - a program which they were assuming would continue. These outstanding shareholders have a right to participate in the future growth of Avis under Avis's strengthened management and - in the case of those shareholders who purchased at prices as high as $47.00 per share from ITT - to recoup their investment.

41. My program is designed to allow the transition of Avis from a wholly-owned subsidiary of ITT into a strong viable

public corporation in the rent-a-car industry able to compete with the other major companies in the industry, all of which are subsidiaries of other corporations in unrelated industries. This, in my opinion, results in the greatest benefit to all the shareholders of Avis.

42. Should the Court at this time wish to reverse its order to me to continue the public distribution of the Trust Property and direct me to dispose of the Trust Property through private sales - a course which I do not recommend - I would recommend to the Court that I be ordered to publicly announce the new direction of the Court and be authorized to seek offers from private bidders and be given opportunity to evaluate such bids with my attorneys and financial advisors before recommending to the Court the offer which, in my opinion, is in the best interests of all of the shareholders of Avis.

43. Prior to the issuance of Trustee Order No. 3 directing me to make a series of public offerings of the Trust Property, I received approximately 12 approaches and indications of interest from potential purchasers. Since the date of that order, when I was not at liberty to entertain such offers I, nevertheless, received approximately 8 additional indications of interest. Many of these inquiries have come from representatives of large and substantial enterprises.

44. Mr. Thomas Constance of Shea, Gould, Climenko & Casey contacted my attorney, Robert C. O'Brien, on or about December 14, 1976 stating that an unnamed client of that firm was interested in purchasing the Trustee's shares and was told by Mr. O'Brien that the Trustee was operating under Trustee Order No. 3 and was not entertaining private offers. At Mr. Constance's request, copies of the relevant Trustee's Orders were sent to Mr. Constance. Thus, for the past five months, counsel for Fuqua

Industries, Inc. has known of my program under the orders of this Court, and has taken no action until less than a week before the date of the Avis Annual Meeting and after a Registration Statement for the sale of 2,000,000 shares of the Trust Property had been completed and filed with the Securities and Exchange Commission.

45. In my opinion, it would be unfair not to allow other prospective private offerors to make their own offers and to have them considered by the Trustee and the Court if, indeed, the Court were to direct me at this late date to abandon the program for public sale of the Trust Property and to complete the disposition through a sale to a private individual or company. In this connection, I wish to point out that if I am permitted to proceed with the presently approved program of disposition, approximately 65% of all the Trust Property will have been distributed by July 1, 1977 and 78% of all the issued and outstanding shares of Avis Common Stock will have been distributed by public offerings. It is my present intention to sell the remaining shares in the Trust as soon as feasible with due regard to orderly market conditions and the availability of necessary financial data within the year following the currently pending sale.

merit
concern

46. Concerning the anti-tender offer provisions to be voted on at the Annual Meeting of Stockholders, they were designed to protect against precisely the situation that is before the Court. These provisions do not forbid offers of merger, consolidation or purchase of shares of Avis. They insure, however, that such an offer would be presented to the Board of Directors for their recommendation and determination that it is in the best interests of all the shareholders for consideration by each shareholder before making a commitment with respect to any such offer.

47. Without these provisions, a company such as Fuqua Industries, Inc. could have acquired a position in the Avis stock and forced a merger on terms unfair to all of the shareholders of Avis.

WHEREFORE, I respectfully request that the motion of Fuqua Industries, Inc. be denied in all respects.

RICHARD JOYCE SMITH

Sworn to and Subscribed before
me this 20th day of May, 1977.

Notary Public

PETER D. LOWENSTEIN
Notary Public, State of New York
No. 31-7609775
Qualified in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA, :
Plaintiff, :
-against- : Civil Action No. 13,320
INTERNATIONAL TELEPHONE and TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY, : Before The Honorable M. Joseph Blumenfeld, D.J.
Defendants, :
and :
AVIS, INC., :
Defendant Intervenor. :

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TRUSTEE'S SECOND REPORT PURSUANT TO TRUSTEE ORDER NO. 1

To The Honorable M. Joseph Blumenfeld
United States District Judge
District of Connecticut

I. This second report, submitted to the Court pursuant to Trustee Order No. 1 dated January 6, 1975, presents for the Court's approval my recommendation of a course of action for the ultimate disposition of the shares of Avis, Inc. common stock which constitute the Trust Property. The program for divestiture which I recommend in my judgment, which is supported by the opinions of my independent financial advisors, is for the best interest of the shareholders of Avis as such and takes into account, as directed by Trustee Order No. 1, the present financial condition of Avis and its continued viability.

II. The program I recommend is as follows:

(a) Subject to the approval of this Court and the newly organized independent Board of Directors of Avis, Inc., International Telephone and Telegraph Corporation (ITT)

Exhibit A

shall promptly subscribe to and pay in cash $17,295,000 for 1,487,000 shares of newly issued shares of Avis common stock. Upon issuance of those shares to it, ITT shall promptly transfer them to me as Trustee to be added to the shares held by me and to be subject in all respects to the underlying Consent Decree and Trustee Order No. 1 of this Court. The undertaking of ITT to purchase the additional shares is stated in a letter dated February 21, 1975 addressed to me by Lyman C. Hamilton, Jr., Executive Vice President and Treasurer of ITT, a copy of which is attached to this report marked Exhibit A.

(b) In the absence of drastically changed conditions and circumstances in the interim, I shall not, unless so ordered by this Court, undertake a public sale or sales of the Avis shares in the Trust until after a full year's operation of Avis under the newly constituted Avis Board of Directors which is now completely independent of and beyond the control of ITT. That independent operation began with the first meeting of the newly constituted Avis Board held on January 15, 1975.

(c) In the absence of drastically changed conditions and circumstances, I shall not, unless so ordered by this Court, during the twelve-month period which began on January 15, 1975 accept any private offer for the Avis shares held in the Trust at a price less than $11.63 per share (the price per share to be paid by ITT for the newly issued Avis shares).

(d) Avis, Inc., upon receipt of payment by ITT for the newly issued shares shall immediately pay to ITT $500,000 on account of existing and outstanding loans by ITT and its affiliates totalling $1,500,000 as of the date of this report. Avis shall further agree as part of this program and settlement to pay the $1,000,000 balance of such loans by December 31, 1975 and shall also agree to use its best efforts to have Avis, Inc. substituted for ITT and ITT affiliates as guarantor of various loans by others to Avis affiliates amounting to approximately $1,550,000.

(e) ITT shall also pay consulting fees amounting to $100,000 due two investment banking firms retained by the Avis management to advise on previous proposals for the distribution of the Avis shares held by ITT.

(f) Upon payment by ITT as provided for under this program, Avis, Inc. shall execute to ITT a release from all obligations under a certain letter agreement dated August 13, 1974 relating to the purchase of Avis shares and from any further obligation to maintain the viability of Avis, Inc.

III. The ITT undertaking represents a settlement of a controversy over the obligations of ITT under an agreement with the Avis management made in August, 1974. It was the contention of Avis management that under such agreement ITT's obligation to purchase the additional Avis shares matured when the shares covered by Trustee Order No. 1 were transferred to the Trustee. ITT on the other hand contended that its obligation would not mature until I, as Trustee, disposed of the Trust Property by means other than a private sale of the Avis shares constituting the Trust Property.

It became clear to me that additional equity capital was urgently needed by Avis and that any delay in the settlement of this controversy could cause irreparable damage to Avis, Inc. and its stockholders. Yet a public sale of the Trust Property under present economic conditions, without first strengthening the financial condition of Avis, would be difficult if not impossible, except on so drastic a give away basis as to ruin the market for Avis stock with consequent serious loss to the public shareholders of Avis, and damage to the financial standing of Avis.

To choose the alternative of a private sale of the Trust Property at this time at current market values would be extremely disadvantageous for the existing public shareholders of Avis. To date the only offers received have been two tentative proposals for purchase of the Trust Property at six to seven dollars a share on a basis which forces minority shareholders out at the same price.

A third tentative proposal provides for the purchase by a private group of $25,000,000 principal amount of debentures of Avis due no earlier than 1987 and convertible over a period of five years into Avis Common Stock at $6.00 per share. The proposal is conditioned on the agreement by the Trustee to grant a five year option to Avis to purchase the Avis shares held by the Trustee at $6.00 per share plus one-half of the amount by which the market price at the time of exercise might exceed $6.00. The shares optioned would be used for employee stock purchase and bonus plans, and to the extent not so utilized, the remainder would be offered to shareholders. At the end of the option period I would have to sell any Avis shares that I then held to this group at the lower of $6.00 per share or the then market price. I do not consider such a proposal feasible for various reasons. It would involve too long a delay in termination of the Trust, too great a dilution of Avis common stock and an unfair advantage to the initiating group.

ITT began its divestiture program by selling 48 percent of the voting shares of Avis in two public offerings. The first, completed in June, 1972, disposed of 1,400,000 shares at a price of $38 a share to the purchasers. The second, completed in January, 1973, disposed of 1,500,000 shares at a price of $47 a share to the purchasers. Avis common stock was listed on the New York Stock Exchange on August 14, 1972. In connection with that listing ITT agreed with the Exchange that in the course of carrying out its complete divestiture of the Avis shares, ITT would use its best efforts to see that no individual, corporation or affiliated group would acquire in the aggregate more than ten percent of Avis's outstanding shares. Reference to this agreement was made in the Avis prospectus dated January 29, 1973. Whatever may have been the intention in making this disclosure it could reasonably have been taken by a purchaser as indicating an intention by ITT to distribute all of its Avis stock through public offerings. At the very least, it is reasonable to assume that a substantial number of those who bought Avis shares from ITT would not have done so if they had known the remaining majority block of that stock would be sold privately to a single person or company.

In my opinion, the use of private offers at this time to overcome Avis's need for additional equity capital would be unfair and inequitable to the minority stockholders of Avis and is not required to comply with the Consent Decree. As stated in my first report to the Court control of Avis by ITT has been effectively and permanently terminated. Public Avis stockholders should not be victimized by further punitive measures against ITT.

IV. My independent financial advisors, Raymond S. Troubh and Ora C. Roehl, have made an intensive study and analysis of Avis management, operations and financial condition. They have concluded, and have so advised me, that a substantial infusion of additional equity capital is urgently needed and that the purchase of additional shares by ITT under the program I recommend is the only possibility for such additional capital within the time required unless the Trust Property is immediately sold at a tremendous sacrifice. They have further advised me that on the basis of their discussions with representatives of Avis management they believe that the infusion of additional equity of $17,295,000 will resolve Avis's immediate financial needs and enable it to make a good beginning in its transformation from an ITT subsidiary to a profitable independent operating company.

In addition to the infusion of new capital, they list the following factors which they believe should contribute to a significant improvement in Avis operations during the next twelve months:

1. A substantial decline in interest rates.
2. An improvement in Avis' Canadian operations.
3. The consolidation and streamlining of Avis' truck operations.
4. The realization of economies under the Wizard System.
5. The continuation of management programs aimed at cash conservation and overall operating efficiencies.
6. The gradual improvement in general economic conditions.

They conclude that as Avis's immediate financial problems give promise of being resolved, the Avis management should now be given time to demonstrate its ability to operate Avis as an independent company and that as improvement in Avis's operations becomes evident in the financial community a much better climate should emerge for the disposition of the Avis stock to the substantial benefit of Avis and its public shareholders. It is therefore my opinion that with the infusion of the $17,295,000 in new capital, Avis, Inc. can operate as a viable entity independent of ITT. In my opinion the program I propose is the only way to secure an immediate infusion of needed capital for the independent operations of Avis. The program is designed to avoid protracted litigation at the expense of the company. Indeed such protracted litigation would compel me to sell the Trust Property privately without any bargaining power whatsoever, at great sacrifice to the public stockholders. Any settlement must be based upon a compromise. Unless there were to be a dramatic turn for the worse in the fortunes of Avis, I would not recommend a private sale at less than $11.63 per share because of the loss it would inflict upon those still holding the Avis stock they purchased in the public offerings.

Finally under the settlement, I retain complete flexibility to discharge my duties as Trustee. Should some unforeseen development occur which would require me as Trustee to come to the Court with some new proposal for disposition of the Trust Property I am free under the program to do so.

WHEREFORE, I respectfully request that the Court grant its approval of the program for disposition of the Trust Property as herein set forth.

Respectfully submitted,

s/Richard Joyce Smith

Richard Joyce Smith
Trustee

Robert C. O'Brien
Peter D. Lowenstein
F. Timothy McNamara

Of Counsel

Dated: Hartford, Connecticut
March 3, 1975

Lyman C. Hamilton, Jr.
Executive Vice President and Treasurer

World Headquarters
320 Park Avenue
New York N.Y. 10022
Telephone (212) 752-6000

February 21, 1975

Richard Joyce Smith, Esq.
Whitman & Ransom
522 Fifth Avenue
New York, N. Y. 10036

Dear Mr. Smith:

As we have discussed, ITT is willing to resolve the outstanding questions relating to its letter to Avis, Inc., signed by me in its behalf and dated August 13, 1974. As you know, ITT has interpreted its obligation to subscribe and pay for to-be-issued shares of Avis Common Stock having an aggregate value of approximately $17,295,000, as becoming effective only when and if you as Trustee dispose of ITT's beneficial interest in Avis, held by you as Trustee, by other than a private sale.

You have now informed us that you intend to report to the Court that in your opinion Avis, Inc. can operate as an independent company with the infusion of the $17,295,000 in equity capital. You have also told us that it is your present intention to recommend to the Court that ITT's stock interest in Avis be distributed by public sale.

In view of this intent and notwithstanding ITT's interpretation of its agreement of August 13, 1974, ITT is now willing immediately to subscribe and pay for the "presently authorized but unissued shares of the Common Stock...of Avis, Inc...having an aggregate value of approximately $17,295,000..." at a purchase price per share calculated at the book value of Avis' issued and outstanding Common Stock at June 30, 1974, being $11.63 per share.

In addition, although ITT does not believe it is contractually or morally obligated to pay certain fees for consulting services rendered Avis management and its non-ITT affiliated Board members totalling $100,000, nonetheless, in the interests of resolving all outstanding disputes, ITT is willing to pay these fees.

EXHIBIT A

As to the $5 million in Avis Series A Preferred Stock purchased by ITT in 1974, ITT has always recognized that this constitutes an interest in Avis, Inc. held by ITT which must be divested pursuant to the 1971 Final Judgment. We believe, however, that the manner of divestiture of this preferred stock interest in Avis, Inc. can best be determined after you have established a method of final disposition of ITT's common stock interest in Avis.

The foregoing commitment to subscribe to and pay for additional Avis Common Stock will, of course, increase ITT's interest in Avis, Inc. ITT's commitment to subscribe to the additional Common Stock was made in reliance upon the following:

1. Your present intent, stated to us, that in your reports to the Federal District Court, District of Connecticut, you will recommend against the sale of ITT's interest in Avis Common Stock (including the newly subscribed to shares) by way of public distribution until after a period of approximately 12 months of Avis operations independent of ITT support, subject, of course, to your obligation as Trustee to consider all offers and options for the disposition of ITT's Avis stock which you may believe to be in the best interest of all the shareholders of Avis, Inc.; and

2. Your present intent, stated to us, that in your reports to the Court you will recommend against the acceptance of any private offer for ITT's interest in Avis Common Stock during a period of approximately the next 12 months at a price per share less than the book value of Avis Common Stock at June 30, 1974 being $11.63 per share, subject, of course, to your obligation as Trustee to consider all offers and options for the disposition of ITT's Avis stock which you may believe to be in the best interest of all the shareholders of Avis, Inc.

The subscription to the additional Avis Common Stock will be subject to the following conditions:

1. An agreement from Avis, Inc. that ITT's subscription to and payment for the additional $17,295,000 in Avis Common Stock and the payment of the $100,000 in consulting fees will fully satisfy and discharge any and all obligations of ITT to Avis by reason of the letter, dated August 13, 1974, and any other obligations, if any, of ITT to Avis, Inc. to support the viability of Avis, Inc.;

2. Your report to the Court that it is your understanding as Trustee that ITT's subscription to and payment for the additional $17,295,000 in Avis Common Stock and the payment of the $100,000 in consulting fees will fully satisfy and discharge any and all obligations of ITT to Avis by reason of the letter, dated August 13, 1974, and any other obligations, if any, of ITT to Avis, Inc. to support the viability of Avis, Inc.;

3. An agreement from Avis, Inc. to repay the existing loans by ITT and its affiliates to Avis and/or its affiliates amounting to approximately $1.5 million, of which $500,000 payable on demand will be offset against the $17,295,000, the subscription price to be paid to Avis, Inc. by ITT, and the remainder of approximately $1 million will be repaid as soon as Avis' loan agreements, as they exist or may be amended, permit, but in any event not later than December 31, 1975; and

4. An agreement from Avis, Inc. to offer as soon as Avis' loan agreements, as they exist or may be amended, permit, replacement with Avis guarantees of the existing guarantees by ITT and ITT affiliates of loans to Avis affiliates, aggregating approximately $1.55 million, and to use its best efforts to obtain promptly all necessary agreements from the lenders to permit such replacement.

I trust the foregoing will be acceptable as an amicable resolution of our controversy.

Very truly yours,

INTERNATIONAL TELEPHONE AND
TELEGRAPH CORPORATION

By

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA, :
Plaintiff, :
-against- :
INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY, :
Defendants, :
-against- :
AVIS, INC., :
Defendant Intervenor. :

- - - - - - - - - - - - - - - x

CIVIL NO. 13,320

TRUSTEE ORDER NO. 3

By order dated and entered herein on January 6, 1975 ("Trustee Order No. 1") this Court appointed Richard Joyce Smith as Trustee to manage and dispose of the undivested interest of International Telephone and Telegraph Corporation ("ITT") in Avis, Inc. ("Avis") and its subsidiaries (the "Trust Property") under the supervision of this Court and subject to the provisions of said Trustee Order No. 1; and

The Trust Property having thereafter been conveyed to the Trustee and the Trustee having rendered to the Court his First and Second Reports, dated February 4, 1975 and March 3, 1975, respectively, concerning his actions taken pursuant to said Trustee Order No. 1 and setting forth his recommendations as to a program for the divestiture of the Trust Property, and said First and Second Reports of the Trustee having been accepted and approved by the Court; and

Exhibit B

The Trustee having advised the Court that he has not, as of this date, received any firm offer for the purchase of the Trust Property and is not now engaged in any negotiations with any party which would lead to such an offer; and

The Trustee having further advised the Court that his counsel and financial advisers have consulted with six major investment bankers and have received reports from each of them as to their recommendations regarding the disposition of the Trust Property, that his financial advisers have reported to him their conclusions as a result of these reports and have advised him that, in their opinion, the Trust Property should be disposed of in a series of public offerings commencing in 1976 subject to market conditions existent at the time of said offerings; and

The Trustee having further advised the Court that ITT has advised him that it is willing to exchange the $5,000,000 principal amount of Avis Preferred Stock for Avis Common Stock at the per share book value of Avis Common Stock as of December 31, 1975, provided that said shares are not sold for a period of two years from January 1, 1976 at a price less than said book value; and

The Board of Directors of Avis having voted that such exchange would be advantageous to the Corporation and its shareholders; and

The Trustee having orally presented to the Court, in furtherance of the program for divestiture set forth in the Trustee's aforesaid Second Report, a proposal for liquidation with respect to the Trust Property now held by him, it is

ORDERED, that

1. The Trustee is authorized to exchange the $5,000,000 principal amount of Avis Preferred Stock held by him into shares of Avis Common Stock at the book value of said Common Stock as of December 31, 1975.

2. The Trustee is directed to begin the disposition of the Trust Property by way of a series of public offerings beginning in the first half of 1976 and continuing from time to time thereafter at such intervals and in such amounts as the Trustee and his financial advisers shall find to be appropriate under all the circumstances and in the best interests of Avis and all its shareholders; provided, however, that for a period of two years, beginning December 31, 1975, the Trustee shall not sell any Common Stock of Avis received in exchange for the Avis Preferred Stock for an amount less than the book value of said Common Stock at December 31, 1975. "

3. The Trustee is directed to furnish the Plaintiff with details of all proposals as formulated for the liquidation of the Trust Property, progress thereon and execution thereof. The use of such information by the Plaintiff is subject to the restrictions of Article XII(C) of the Final Judgment.

4. In order to keep Plaintiff apprised of the condition of the Trust Property, Avis is directed to furnish Plaintiff with copies of all minutes of Board of Directors' and Shareholders' Meetings, copies of monthly statements of consolidated income, copies of all materials filed with the Securities and Exchange Commission, copies of all proxy soliciting material, and copies of all reports to shareholders.

Dated at Hartford, Connecticut, this 14th day of January , 1976 .

/s/ M. Joseph Blumenfeld
M. JOSEPH BLUMENFELD
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, Plaintiff, -against- INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY, Defendants -against- AVIS, INC., Defendant Intervenor	:	CIVIL NO. 13,320

TRUSTEE ORDER NO. 4 AMENDING TRUSTEE ORDER NO. 3

WHEREAS, by order dated and entered herein on January 6, 1975 ("Trustee Order No. 1") this Court appointed Richard Joyce Smith as Trustee to manage and dispose of the undivested interest of International Telephone and Telegraph Corporation ("ITT") in Avis, Inc. ("Avis") and its subsidiaries (the "Trust Property").

WHEREAS, by order dated January 14, 1976, this Court authorized the Trustee, inter alia, to exchange the $5,000,000 principal amount of Avis Preferred Stock held by the Trustee for shares of Avis Common Stock at the book value of said Common Stock as of December 31, 1975, and directed the Trustee to begin the disposition of the Trust Property by way of a series of public offerings beginning in the first half of 1976 and continuing from time to time thereafter at such intervals and in such amounts as the Trustee and his financial advisors shall find to be appropriate under the circumstances and in the best interests of Avis and all its shareholders; provided, however, that for a period of two years beginning December 31,

Exhibit B

1975, the Trustee shall not sell any Common Stock of Avis received in exchange for the Avis Preferred Stock for an amount less than the book value of said Common Stock at December 31, 1975; and

WHEREAS, the Trustee having advised the Court that ITT has since advised him that it is now willing to exchange the $5,000,000 principal amount of Avis Preferred Stock for that number of newly issued shares of Avis Common Stock determined by dividing $5,000,000 by the higher of (x) $12.30, being the per share book value of Avis Common Stock issued and outstanding as of December 31, 1975 or (y) the price to the public of the shares of Avis Common Stock being sold by the Trustee in the first of a series of public offerings; provided that the Trustee shall not sell such newly issued (M.J.B) shares of Common Stock at a price less than the price determined in accordance with the formula set forth above for a period of two years from January 1, 1976; and

WHEREAS, the Trustee having further advised this Court that Avis is willing to agree to issue and deliver said newly issued shares of Common Stock to the Trustee upon receipt of the Avis Preferred Stock from the Trustee on the day (hereinafter referred to as the "Closing Date") that the shares of Avis Common Stock being sold by the Trustee are first offered to the public, and until the Closing Date, the Avis Preferred Stock shall continue to be treated as issued and outstanding, the dividend thereon being accrued to and paid on the Closing Date; and

WHEREAS, the Trustee having advised the Court that the said exchange is advantageous to Avis and its shareholders; and

WHEREAS, the Trustee having presented to the Court, a draft of an agreement between Avis and the Trustee to be consented to by ITT, which would provide for the implementation of the above, a copy of which is attached hereto;

IT IS ORDERED THAT:

1. The Trustee is authorized to exchange the Avis Preferred Stock for the number of newly issued shares of Avis Common Stock determined by dividing $5,000,000 by the higher of (x) $12.30, being the per share book value of Avis Common Stock issued and outstanding as of December 31, 1975 or (y) the price to the public of the shares of Avis Common Stock being sold by the Trustee in the first of a series of public offerings.

2. The Trustee is authorized to receive the shares of Avis Common Stock to be issued and delivered in exchange for the Avis Preferred Stock on the day that the shares of Avis Common Stock being sold by the Trustee are first offered to the public (the "Closing Date"), and to receive the dividend accrued to and to be paid on the Closing Date.

3. The Trustee is authorized to confirm to Avis and agree with ITT that for a period of two years from January 1, 1976 he will not sell such shares of Avis Common Stock at a price less than the price per share determined in accordance with the formula set forth in paragraph 1 of this order.

Dated at Hartford, Connecticut, this 23rd day of April, 1976.

M. JOSEPH BLUMENFELD
United States District Judge

AVIS, INC.
900 OLD COUNTRY ROAD
GARDEN CITY, NEW YORK 11530

April , 1976

Richard Joyce Smith, Esq.
Whitman & Ransom
522 Fifth Avenue
New York, New York 10036

Dear Mr. Smith:

This is to confirm the agreement of Avis, Inc. ("Avis") and Richard Joyce Smith, Esq., Trustee (the "Trustee"), concerning the exchange of 50,000 shares of Avis Series A Preferred Stock, stated value $100 per share (the "Avis Preferred Stock"), held of record by the Trustee and owned beneficially by International Telephone and Telegraph Corporation ("ITT") for shares of Avis common stock, par value $1 per share ("Avis Common Stock"), upon the terms and conditions set forth below:

1. Avis agrees to issue to the Trustee in exchange for the Avis Preferred Stock that number of shares of Avis Common Stock determined by dividing $5,000,000 by the higher of (x) $12.30, being the per share book value of Avis Common Stock issued and outstanding as of December 31, 1975 or (y) the price to the public of the shares of Avis Common Stock being sold by the Trustee in the first of a series of public offerings.

2. Avis shall issue and deliver said shares to the Trustee upon receipt of the Avis Preferred Stock from the Trustee on the day (hereinafter referred to as the "Closing Date") that the shares of Avis Common Stock being sold by the Trustee are first offered to the public. Until the Closing Date, the Avis Preferred Stock shall continue to be treated as issued and outstanding, the dividend thereon being accrued to and paid on the Closing Date.

3. The Trustee agrees to exchange the Avis Preferred Stock for shares of Avis Common Stock on the Closing Date on the terms set forth above. The Trustee hereby confirms to Avis and agrees with ITT that for a period of two years from January 1, 1976 he will not sell such shares at a price less than the price determined in accordance with paragraph 1 hereof.

4. On the Closing [illegible], the Trustee, ITT and Avis shall each be entitled [illegible] receive, as a condition of such exchange, such opinions of counsel and other documents as each may reasonably request.

5. The Trustee represents and warrants that the shares of Avis Common Stock issued in exchange for the Avis Preferred Stock will not be resold or otherwise disposed of except in compliance with the Securities Act of 1933, as amended, and the rules and regulations of the Securities and Exchange Commission thereunder or except pursuant to the direction and order of the United States District Court, District of Connecticut.

Sincerely yours,

AVIS, INC.

By____________________
Chairman and Chief Executive

ACCEPTED AND AGREED TO:

____
RICHARD JOYCE SMITH, ESQ., Trustee

ITT hereby agrees and consents to the exchange by the Trustee of the Avis Preferred Stock for shares of Avis Common Stock upon the terms and conditions set forth above.

CONSENTED TO:

INTERNATIONAL TELEPHONE AND
TELEGRAPH CORPORATION

By____________________
Executive Vice President
and Treasurer

SHEA GOULD CLIMENKO & CASEY
330 MADISON AVENUE
NEW YORK, NEW YORK 10017
(212) 661-3200
TELEX 424416
CABLE HOLMANO

WILLIAM A. SHEA
JESSE CLIMENKO
BRUCE A. HECKER
JAMES J. A. GALLAGHER
BERNARD J. RUGGIERI
ALLAN J. PARKER
ROBERT J. RUSEN
IRVING JACOBSON
SAMUEL W. INGRAM, JR.
JOHN A. CRAIG
KEVIN E. MCGRATH
WILLIAM C. FINNERAN, JR.
ALLAN R. TESSLER
HERMAN A. BURSKY
THOMAS C. CONSTANCE
LESTER YASSKY
JOEL L. PAPERNIK

MILTON S. GOULD
ROBERT J. CASEY
EDWIN M. JONES
BERNARD D. FISCHMAN
MARTIN L. SHELTON
RALPH L. ELLIS
GEORGE DE GENARO
SHELDON D. CAMHY
WILLIAM A. HAGAN, JR.
MICHAEL LESCH
LEON R. GOLD
VINCENT W. QUINN, JR.
RONALD H. ALENSTEIN
ARNOLD I. JACOBS
IRA POSTEL
ROBERT W. CLAESON

MILES F. MCDONALD
SAUL S. STREIT
OF COUNSEL

WASHINGTON, D.C. OFFICE
1250 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 833-9850
CABLE HIRGO

MARIO V. MIRABELLI*
JUDSON A. GOULD*
RESIDENT PARTNERS

EUROPEAN OFFICE
20 CHARLES STREET
LONDON W1X 7PG
01-491-3515
TELEX 28836

GEORGE E. BOSS*
RESIDENT PARTNER

*NOT ADMITTED IN NEW YORK

May 16, 1977

Richard Joyce Smith, As Trustee
for International Telephone & Telegraph Corp.
c/o Whitman & Ransom
522 Fifth Avenue
New York, New York 10036

Dear Mr. Smith:

We write on behalf of our client, Fuqua Industries, Inc., 3800 First National Bank Tower, Atlanta, Georgia 30303 ("Fuqua").

We wish to advise that Fuqua intends to make an offer to purchase for cash all of the 3,743,504 shares, or approximately 47%, of Avis, Inc.'s ("Avis") common stock held by you as Trustee for International Telephone & Telegraph Corp. ("ITT"). From a reading of Avis' announcement in the Wall Street Journal on May 12, 1977, and the Avis Proxy Statement dated May 4, 1977, it appears that your proposal as Trustee that Avis stockholders consider procedures designed to discourage acquisition attempts would have the effect of discouraging even an offer such as that of our client; should the proposal be adopted, Fuqua would not be interested in purchasing the 47% block. We urge that you join us in our request that the Board delay the Avis Annual Meeting of Stockholders or that you not vote your shares at such meeting until the court has passed upon our application as described hereinafter, because the adoption of the proposal may frustrate the ability of ITT to receive the best available offer for its Avis shares.

Exhibit C

Additionally, pursuant to Rule 14a-9 of the Securities Exchange Act of 1934, we suggest that Avis is required to update its Proxy Statement and to advise its stockholders of Fuqua's offer and the action which you intend to take relative thereto.

In view of the Order of United States District Court for the District Court of Connecticut dated January 14, 1976, we intend to file with that Court, within the next few days, an application on behalf of Fuqua for an order authorizing you to accept such offer and to enter into a contract to sell the 3,743,504 shares of common stock of Avis that you are holding as Trustee for $15.50 per share.

We would appreciate learning your intentions as far in advance as is possible of the Annual Meeting, which is scheduled to take place on May 25, 1977.

Should you require any further information regarding our client's offer, feel free to call the undersigned in the first instance, or Thomas E. Constance of this office.

Thank you in advance for your expeditious cooperation in this matter.

Very truly yours,

Milton S. Gould

MSG:mk

cc: Hon. Joseph M. Blumenfeld
Hon. Peter C. Dorsay
Department of Justice -
Anti Trust Division

continued . . .

Richard Joyce Smith, As Trustee
for International Telephone & Telegraph Corp.
May 16, 1977
Page three

cc: Board of Directors of Avis, Inc.
Mr. Drummond C. Bell
Mr. Rodney C. Gott
Mr. Robert W. Haack
Mr. William W. Lyon
Robert C. O'Brien, Esq.
Dr. Eli Shapiro
Olcott D. Smith, Esq.
Mr. William C. Fruhan, Jr.
Mr. Alva T. Bonda
Mr. John J. Scanlon

International Telephone & Telegraph Corp.
Mr. H. S. Geneen
Chairman & Chief Executive Officer
H. J. Aibel, Esq.
Senior Vice President & General Counsel

WHITMAN & RANSOM
522 FIFTH AVENUE
NEW YORK, N.Y. 10036
212 575 5800
CABLE: WHITSOM, N.Y.
OR
BENOOSNI, N.Y.
TELEX: 12 9100

[illegible] Pennsylvania Ave., N.W.
Washington, D.C. [illegible]
[illegible]
Cable: Whitsom, D.C.

[illegible] South Flower Street
Los Angeles, California [illegible]
213 489-1000
Cable: Whitsom, L.A.
Telex: [illegible]

May 18, 1977

Milton S. Gould, Esq.
Shea, Gould Climenko & Casey
330 Madison Avenue
New York, New York 10017

Received
E.C. Kaslinsky
5/18/77

Dear Mr. Gould:

I acknowledge your letter of May 16, 1977, delivered by hand to this office in the late afternoon of May 17, 1977, written to me on behalf of your client, Fuqua Industries, Inc.

Pursuant to Orders of the United States District Court for the District of Connecticut under which I am functioning as its Trustee in a program for the public distribution of shares of the Common Stock of Avis, Inc. held by me as Trustee, I have been engaged in such distribution through a series of public offerings continuing from time to time at such intervals and in such amounts as I and my financial advisors find to be appropriate under all of the circumstances and in the best interests of Avis and all of its stockholders. Yesterday, the Company filed with the Securities and Exchange Commission a Registration Statement covering a proposed sale by me of 2,000,000 shares of Avis Common Stock to underwriters for a public distribution of those shares next month. Unless otherwise ordered by the Court, I intend to proceed with that sale.

I am also authorized by an order of the same court to exercise my own discretion in voting on the proposed changes in the Avis Certificate of Incorporation and By Laws to be presented to the Annual Meeting of the Shareholders of that Company. I have already publicly stated my intention to vote the Avis stock held by me as Trustee in favor of the proposals. Unless otherwise ordered by the Court, I intend to cast my vote as stated.

I shall not request the Avis Board to delay the Avis Annual Meeting.

Very truly yours,

Exhibit D

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, Plaintiff, -against- INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY, Defendants, and AVIS, INC., Defendant Intervenor.	Civil Action No. 13,320 Before the Honorable M. Joseph Blumenfeld, D.J. AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RAYMOND S. TROUBH, being duly sworn, deposes and says:

1. I submit this affidavit in opposition to the motion of Fuqua Industries, Inc. ("Fuqua") for an order enjoining Richard Joyce Smith, as Trustee, and Avis, Inc. ("Avis") from voting shares of the common stock of Avis at the annual meeting of the stockholders scheduled for May 25, 1977 and soliciting any proxies with respect thereto and for an order enjoining Avis from holding that May 25, 1977 annual meeting. I am an independent financial consultant as well as a member of the bar of the State of New York. I am familiar with the facts and matters involved in connection with Fuqua's motion.

2. I am a graduate of Bowdoin College and Yale Law School. I have served as a Law Clerk to Chief Judge Thomas W. Swan, U.S. Court of Appeals, 2nd Circuit and as a Law Clerk to

Mr. Justice Harold H. Burton, U.S. Supreme Court. From August, 1954 through July 1958, I was an Associate of Sullivan and Cromwell, New York, New York, where I handled general corporate legal work, specializing in various financial matters such as SEC registration statements and mutual funds. In 1958, I became secretary and treasurer of the Lazard Fund, Inc. and was in charge of all legal, accounting, and administrative functions for this fund.

3. Subsequently, I became associated with the investment banking firm of Lazard Freres & Co., becoming a General Partner in 1968. I resigned as a General Partner of that firm on January 1, 1974 in order to become an independent financial consultant, specializing in cash tender offers, acquisitions and mergers. While an Associate of Lazard Freres & Co., I participated in various investment banking endeavors including tender offers, mergers, acquisitions, underwritings, private placements, divestitures and the providing of financial advice generally. While a General Partner of Lazard Freres & Co., I was responsible for a number of cash tender offers and exchange offers requiring my counsel and advice regarding the numerous issues involved in such offers including advice as to the adequacy of prices.

4. I have lectured on cash tender offers in scholarly, business and legal forums including, inter alia Yale University, Wharton School of Finance, New York University Law School, the American Management Association and the American Bar Association. I am the author of "Purchased Affection - A Primer on Cash Tender Offers," Harvard Business Review, July-August, 1976.

5. I have participated in and rendered advice regarding various cash tender offers both as a consultant to companies making such offers and companies whose shares were being sought. My counsel has been sought and my testimony received in numerous matters involving both cash tender offers and exchange offers. In recent years, I have rendered advice and/or offered testimony concerning the following cash tender or exchange offers:

BUYER	TARGET COMPANY
ALASKA INTERSTATE COMPANY	APCO OIL COMPANY
NORTHWEST ENERGY COMPANY	APCO OIL COMPANY
UNITED TECHNOLOGIES CORP.	OTIS ELEVATOR COMPANY
CRANE COMPANY	WESTINGHOUSE AIR BRAKE CO.
ITT	HARTFORD FIRE INSURANCE COMPANY
CAVENHAM, LTD.	GRAND UNION COMPANY
BROWN & WILLIAMSON	GIMBEL BROTHERS
CONTINENTAL GRAIN	ALLIED MILLS
NORTHWEST INDUSTRIES	B. F. GOODRICH, INC.
MONOGRAM INDUSTRIES	ROYAL INDUSTRIES

Background of Avis Review

6. Mr. Ora C. Roehl and I were retained by Richard Joyce Smith, the Trustee, immediately after his appointment for the purpose of rendering financial advice and planning in connection with his holding of Avis's shares and the various methods of carrying out the required divestiture thereof as required by the order of this Court dated January 6, 1975.

7. As an Associate and General Partner of Lazard Freres & Co., I have had extensive experience with Avis since control of the company was acquired by Lazard Freres & Co. in 1961 and its subsequent acquisition by International Telephone

and Telegraph Corporation ("ITT"). I advised on various types of financing for Avis both while it was a public company and while owned by ITT. I also advised on the two public sales of Avis shares by ITT prior to the consent decree.

8. Upon our appointment, Mr. Roehl and I immediately began a study of Avis and its then financial situation including attending meetings with various senior operating and finance officials of Avis and ITT. Based upon our initial investigation and research, we reported to the Trustee that, in our view, various divestiture proposals which he had received requiring immediate disposal of shares would be imprudent and unfair to Avis and to all of its shareholders. (See "Report to Richard Joyce Smith, Trustee" dated February 3, 1975 annexed hereto as Exhibit "A"). We felt that Avis needed immediate financial help in terms of increased equity, and a period of relative serenity during which its management could run the company without the various debilitating pressures to which it had previously been subjected in terms of a number of merger proposals and attempts by ITT to sell its controlling interest. In our judgment, the Avis financial picture could and would improve sharply in terms of earnings and capital base improvements and interest rates would come down sharply. As a consequence of these views, we suggested that stock market reception would improve and the values inherent in Avis shares would be recognized. We were continually mindful of the expressed obligation of the Trustee to hold and vote the shares in the best interest of all of the shareholders of Avis.

9. In a report to the Trustee dated February 18, 1975 we said: "it is our opinion that the agreement to delay the divestiture of the Avis stock for a year will be beneficial and in

the best interests of Avis, its public shareholders and the general public, as it is our expectation that it will require about that much time for the company's management to demonstrate Avis's viability as an independent operating company." (See "Report No. II to Richard Joyce Smith, Trustee" dated February 18, 1975, p. 5, annexed hereto as Exhibit "B"). We also stated: "it may well be that the interests of its shareholders, customers and the general public would best be served by it remaining an independent entity." (id.) We then suggested: "it is possible that the best final divestiture plan would be a series of two or three underwritten public offerings." (id.)

10. Our rationale for the proposal that the interests of all parties concerned would best be served by a series of public underwritten offerings was essentially as follows:

a. The Avis management needed a reasonable period of time to put its own house in order, free from outside pressures;

b. It was our belief that Avis's operating earnings would sharply improve;

c. It is our opinion that market conditions would substantially improve; and

d. The stock market must be assured that an orderly distribution of the shares would take place and that no deluge of stock would be thrust upon an unwilling or illiquid market.

11. It is interesting to note that the first offering by the Trustee of shares took place on May 27, 1976 at $9.25 per share or approximately 90% above the price of the shares on the date of his appointment as Trustee. On May 17, 1977 the Trustee

filed with the Securities and Exchange Commission a proposed offering of two million additional shares of Avis. While the offering price, of course, is determined as of the effective date of the registration statement, it is interesting to note that the closing price of Avis on that date was $14.00 per share or 51% above the price of the Trustee's initial offering and almost three times the price on the date of the Trustee's appointment. The wisdom of the Trustee's careful plan of distribution is underlined by comparing the near tripling of the Avis share price with the Dow Jones Industrial increase of only 47% during the same period.

12. It is my considered judgment, based on a thorough study of Avis and its prospects and barring any adverse change in market, economic or monetary conditions, that the final public offering of the Trustee shares may well be at a price significantly higher than today's market price. In short, I continue to believe that the Avis shares are undervalued and that the undervaluation stems primarily from the uncertain and chaotic situation regarding its future.

weak

13. On or about May 18, 1977, I was advised by the Trustee that he had received a letter dated May 16, 1977 from the law firm representing Fuqua wherein it was stated that Fuqua intended to make an offer to purchase for cash all of the 3,743,504 shares of common stock of Avis, Inc. held by Mr. Smith as Trustee. I have read that letter and I have also reviewed the affidavit of Roderick A. Dowling sworn to on May 17, 1977, submitted in support of Fuqua's motion. In that affidavit, Mr. Dowling states at page "3" thereof: "It is Fuqua's position that such purchase would be more advantageous, fair and equitable to and in the better interests of Avis, its stockholders and defendant International Telephone and Telegraph Corporation ("ITT") than the plan of

divestiture of the Trustee Property as is set forth in Trustee Order No. 3 of this Court...." It is my considered judgment for the several reasons expressed below, that Fuqua's offer would operate to the detriment, not the benefit, of the various parties concerned.

The Trustee's Plan

14. In our report to the Trustee dated April 18, 1977, we confirmed our view that to accomplish the original objectives of the Trustee's plan, the Company should take steps" "to strengthen its charter and by-law provisions against hostile takeovers". (See Memorandum to Richard Joyce Smith, Trustee, April 18, 1977, P. 2, annexed hereto as Exhibit "C"). We also stated that the adoption of the proposals would in no way be detrimental to or impede the plan for possible distribution of the remaining shares held by the Trustee. (id. at pp 4-5) The adoption of Proposals 2 and 3 would give the Board of Avis more latitude in dealing with unnegotiated offers for the acquisition of Avis shares. Those Proposals would neither prevent the present Board of Avis from accepting a tender offer or merger proposal which it deems to be in the best interests of Avis and all of its shareholders, nor would those Proposals deter a well financed buyer who was capable of purchasing one hundred percent of the Avis common shares.

15. The orderly distribution of the shares by a carefully planned public distribution would remove the "market overhang" of a large block, and eliminate the uncertainty that control of the Company would pass to a third party whose interests may be in conflict with those of the public shareholders. The elimination of the above uncertainties would contribute, over the long run, to increased values for Avis shares in the market.

16. Avis is in the enviable position of having a Board of Directors composed almost exclusively of outside directors.

i.e., Retainer, Bonds ($50,000)

The only Avis director who is also an employee of Avis is its president. Accordingly, none of the members of this Board, except the president, is dependent upon Avis' salaries or emoluments. In my judgment, the present Board can be relied upon to make sound decisions relating to merger prospects which are in no respect self-motivated.

What companies - vast majority

17. The Avis Proposals are not unique; they have been adopted, in one form or another, by innumerable public companies. The adoption of such Proposals in the past has not been a significant obstacle to merger or tender offer proposals, in general, nor has it prevented their consummation. In my professional judgment, the adoption of such Proposals will benefit all of Avis' shareholders because they afford the Board of Directors increased leverage to negotiate a better deal for all of Avis' shareholders than could be achieved by acceptance of the initial terms offered in any merger proposal or tender offer.

18. I have been advised by the Trustee that since his appointment various offers have been made to him regarding the acquisition of the Avis shares. He has consistently rejected such offers. Mr. Roehl and I, as financial advisors to the Trustee, have reviewed a number of these offers and have advised against their acceptance. We do not believe that the Avis share price has yet fully recovered from its depressed depths which are in large part due to the controversy and notoriety involved in the original divestiture. As the Trustee gradually and carefully phases out his holdings, we believe that the adoption of Proposals 2 and 3 will in some respect provide a further measure of protection or "umbrella" to the Avis shareholders so that legitimate offers may be considered in a prudent, timely and thorough way. The Proposals in no way prevent the Board from accepting any offers deemed beneficial to all Avis shareholders.

The Merits of Fuqua's Proposed Offer

19. It is my considered judgment as an investment banker and financial consultant that Fuqua's position as outlined in Mr. Dowling's affidavit, is, in its entirety, without merit. I say this for the following reasons:

a. The offer of cash would be made only to the Trustee and not to the remaining public shareholders of Avis;

not relevant 15.50 offer

b. When a so-called "partial tender offer" is made, the shares remaining in the market most often fall below the offered price for a considerable period of time;

what does he know about anti-trust

c. Any consolidation of Avis and Fuqua would raise significant anti-trust questions given the nature of the business of each. In addition, there could be a severe adverse impact upon Avis and its public shareholders in the event of a protracted investigation conducted by government regulatory agencies. Furthermore, if Fuqua should ultimately be required to dispose of any interest in Avis which it may purchase, the trauma, chaos and confusion which has prevailed since the date of the original antitrust complaint would begin anew;

d. Fuqua's suggestion that a subsequent merger be effected with stock would leave the public shareholders in a quandary for an indefinite time, subject to the fluctuations of the market and at the mercy of Fuqua;

no senior debt

defend

e. Fuqua securities, whether common stock or debentures, are speculative securities and, as a professional advisor, I would not recommend that either the Trustee or public shareholders accept them in exchange for Avis shares; and

defend

f. The proposed offer, by a wide margin, fails to give recognition to values inherent in a control block of stock.

~~at~~ premium will also be given to public - under their proposal sold to market

The Desirability of Fuqua as a Parent

20. It is the Trustee's responsibility to consider the nature and background of any company which offers to take over Avis. Having reviewed background data relating to Fuqua, I would

recommend to the Trustee that Fuqua is not the proper parent for Avis for a number of reasons:

a. Fuqua is a conglomerate, a group neither understood nor favored in today's market environment;

b. Fuqua's debt securities have a speculative rating;

public debt is subordinated debentures

c. Fuqua's current "debt to equity ratio" is not strong as evidenced by the speculative rating assigned to its debt securities. Any additional indebtedness incurred to finance the proposed purchase of the Trustee's shares would further impair an already strained capital structure;

acquisition of avis - basically a transportation co.

d. Avis is in a "capital intensive industry" requiring immediate, easy and frequent access to public and private credit markets. Affiliation with Fuqua would hinder, not assist, Avis in its credit relationships;

not true

e. Fuqua's independent accountants have rendered a qualified opinion which merely conditionally certified its financial statements due to an outstanding judgment against Fuqua in excess of ten million dollars; and

f. Avis's significant borrowing agreements from institutional investors have provisions requiring immediate acceleration of its debt should control of Avis be acquired by any one person or any affiliated group of persons other than the Trustee.

21. For all of the foregoing reasons, I submit that Proposals 1, 2 and 3 are in the best interest of all of the shareholders of Avis and that the partial tender offer proposed by Fuqua is inimical to those interests.

WHEREFORE, I respectfully support the position of the

Trustee that the motion of Fuqua Industries, Inc. be denied in all respects.

Raymond S. Troubh

Sworn to before me this
20th day of May, 1977.

James S. Morris
Notary Public

JAMES S. MORRIS
Notary Public, State of New York
No. 60-2777125-Qual in Westchester C
Term Expires March 30, 1979

Report to Richard Joyce
Smith, Trustee

February 3, 1975

From: Raymond S. Troubh RST.
Ora C. Roehl

During the past few weeks we have reviewed various records and reports covering the divestiture of Avis by ITT; we have visited with ITT and Avis officials; we have visited the offices of Avis and discussed the operations of the Company in some detail with its financial and operating officers; and we have reviewed in a general way various divestiture possibilities since the Trustee is obligated by Trustee Order No. 1 to report on the feasibility of an exchange offer by February 5. We have, at this time, given special attention to the feasibility of an exchange offer of Avis stock for ITT stock.

The court in Trustee Order No. 1 stressed the obligation of the Trustee to take into account, in all his disposition plans, the present financial condition of Avis, its continued viability and to vote the Avis stock having in mind the best interests of the shareholders of Avis.

Accordingly, the first two parts of this memorandum will briefly highlight the present financial condition of Avis and we shall also comment on our opinion that an immediate divestiture of Avis stock would not be in the best interest of the Avis shareholders. We shall then outline our conclusions as to the feasibility of an immediate exchange offer and the memorandum will conclude that a hasty divestiture could greatly harm the interests of present Avis shareholders.

I. THE PRESENT FINANCIAL CONDITION OF AVIS

In our opinion the Trustee cannot properly weigh the various disposition alternatives until the questions surrounding the present financial condition of Avis are clarified, especially the unanswered question concerning the purchase of 1,487,000 shares of Avis stock by ITT.

ITT and Avis reviewed the operations of Avis in some detail during 1974 and it was jointly determined that ITT would furnish Avis with $17,295,000 of additional capital by purchasing 1,487,000 shares of common stock at the market price but not less than the book value on June 30, 1974 of $11.63 per share (see August 13, 1974 letter).

EXHIBIT A

At the time that ITT agreed that additional equity capital should be furnished Avis, to keep it in a viable operating condition, discussions were also being held by ITT aimed at disposing of its Avis common stock interests.

One of the methods under review was the possible sale of the Avis stock to a single purchaser. It was evidently felt that such a single purchaser would be in a position to furnish additional needed new equity capital to Avis -- thus making it unnecessary for ITT to buy the additional common stock. Whatever the reason, the purchase by ITT of additional Avis common stock was delayed. The Trustee has recently reviewed the additional capital question with ITT and subsequent meetings are being scheduled.

While it is impossible for us at this time to develop firm conclusions as to Avis's future financial needs, we did review with Avis management their 1974 discussions with ITT that resulted in the agreement whereby ITT committed itself to purchase additional common stock from Avis. The Avis management has told us that if similar discussions were held today the additional equity required, to accomplish the objectives considered essential in mid-1974, would be substantially greater.

Representatives of the Trustee also met with financial representatives of ITT to review ITT's thoughts on the Avis financial picture and its future needs.

In our discussions with the Avis management we reviewed the capitalization of Avis in some detail. In the review the steps needed to improve Avis's capital ratios were thoroughly discussed.

It was indicated that $27,500,000 of capital would be needed to bring down the ratios of debt to equity to a generally desirable 300%. Presently the allowable figure is 350% with a temporary ceiling of 375%. It was our understanding that the infusion of $17,295,000 of additional equity might reduce the ratio to approximately 325% at the peak of the loan demand.

A study done in mid-1974 by a senior official of Irving Trust Company, Avis's lead bank, concludes that approximately $36,000,000 of long term capital would be desirable to replace certain of its short term borrowings.

Avis has been a strong growth company, and as it is in a debt intensive industry its future growth will continue to require additional debt financing and it may also be necessary to raise common equity in addition to the $17,295,000 that is expected to be provided by ITT. Recent studies indicate that for Avis to have capital structure ratios comparable to those of

December 31, 1965 would require additional equity of about $42,000,000; to be an A rated company would require $63,000,000; and to be a Baa company would require about $26,000,000.

We have also discussed with Avis management its recent relatively poor results compared with those of Hertz, the number one factor in the car rental business and Avis's number one competitor. We believe that a good part of Avis's poor showing is related to its highly leveraged capital structure, compared with Hertz, and its recent borrowings at interest rates in excess of prime rates, whereas Hertz has a greater proportion of its borrowed funds in long term money at much lower rates. Avis management indicated to us that a $33,000,000 infusion of capital would be needed to bring its ratios up to the Hertz ratios.

In our discussions with Avis management we also reviewed their plans to reduce operating expenses by retirement from the truck leasing business, cut-back of operations in Canada, disposal of certain Canadian properties, more efficient use and reduction in car rental fleets. Economies effected in 1974 were said to total more than $5,000,000 annually.

We have also reviewed various earnings forecasts for 1975 and we have concluded that with the infusion of the additional $17,295,000 of common stock Avis can continue to grow and be a viable company. One company study concluded that earnings for 1975 could increase as much as 100% over 1974.

Discussions are now going on within the Avis board as to the impact of the three possible accounting methods that could be used to report on 1974 operations. The various alternatives are now being discussed with Arthur Andersen & Company, the company's auditors, and with the SEC.

All of these methods would have varying impacts on 1974 reported results. However, if the company can produce the earnings that it has forecasted for 1975, the 1975 results compared with 1974 should be most favorable irrespective of the accounting methods that are finally used to report on 1974.

We have not, however, come to any conclusions as to the company's vitality and viability if the infusion of additional equity capital is further delayed. One thing seems certain, however, and that is that the company's lenders would not look kindly upon further delay.

II. THE BEST INTERESTS OF AVIS SHAREHOLDERS

It is our general conclusion that it would not be in the best interests of the company or of the Avis shareholders if Avis stock were to be put on the market at this time.

An immediate divestiture by the Trustee of his Avis stock, no matter what disposition method might be used, would in our opinion be unfair to the public shareholders of Avis who only relatively recently purchased stock on the two public underwritings at an average price of $42.50. The price of Avis today is severely depressed at its present price of 6 3/8.

Disposition today at prices related to current market in our opinion would result in a price that would not properly reflect the infusion of the additional $17,295,000 of equity capital and the probability of significantly improved operating results that should become visible during the second and third quarters of 1975.

It would not be in the best interest of the company or the Avis shareholders if Avis stock were put on the market without the financial community properly understanding the current and future Avis financial and operating plans. The financial markets are presently undergoing significant changes and interest rates which are of such overriding importance to Avis are currently in the process of a significant downturn.

The 1974 audit should be completed and a report to shareholders should be released before any final disposition method is determined. A report should be available some time in March. It would also seem desirable to hold a shareholders' meeting before any final divestiture plan is developed so that the public shareholders who have such a large financial stake in the company would be given an opportunity to reflect their views.

During this interim period, it would be expected that the company would actively continue to explore its long range operating plans, possibilities for additional economies, as well as the exploration of methods to improve its long term capital structure.

It would also be important for the Trustee to hold meetings with Avis's insurance company and bank lenders as soon as possible in order to assure them of his concern as to the continued viability and growth of Avis. The strengthening of the company's banking and lending relationships through continued cooperative discussions should be of substantial help to the company in its planning for the future.

Avis management has made the point that a great deal of its time and strength during the past year has been spent in dealing with the divestiture questions and problems. It believes that too much of its time has been spent on divestiture matters and not enough on managing the business.

In other words, it is Avis's management's opinion that it can demonstrate that a strong, healthy, independent company can be developed in a relatively short period of time. If the earnings estimates that management has given us show promise in the second quarter of 1975 of being attained, it would be in the best interests of all for any divestiture plan to be timed so as to coincide with a much better overall Avis financial picture.

III. THE DISPOSITION OF AVIS STOCK VIA AN EXCHANGE OFFER

Trustee Order No. 1 directs the Trustee to promptly consider the feasibility of the disposition of the Trust Property by way of an exchange offer for ITT securities.

While clarification is needed as to when ITT may purchase additional common stock, such a question would evidently not exist if an exchange offer for ITT securities were to be announced. Upon such announcement ITT would be obligated to purchase approximately 1,487,000 shares of Avis at a cost of $17,295,000 and the Trustee would thus have 4,587,000 shares of Avis stock that would be offered in exchange for ITT securities. We have not considered here the possibility that the 50,000 shares of Preferred Stock might also be converted at the same rate resulting in the issuance of an additional 430,000 shares of common stock.

The exchange offer as proposed by the Department of Justice is that the Trustee, on behalf of ITT, offer to all shareholders of ITT the right to exchange their ITT securities for Avis common stock. If successful, this would distribute the entire 4,587,000 shares of Avis among the ITT common stockholders and relieve the Trustee (and ITT) of ownership of these shares. (ITT has 94,000,000 common shares outstanding.)

Having considered the exchange offer proposal from the point of view of Avis and its shareholders and ITT and its shareholders as well as the point of view of the Department of Justice that the divestiture be accomplished as expeditiously as possible, it is our conclusion, as more fully outlined below, that the exchange offer is not an appropriate method of divestitute of the 4,587,000 shares of Avis.

While the exchange offer form has been used in recent years as a method to take over a company other than through merger or cash tender offer, and lately has become extremely popular in changing the debt equity ratios in a company's capitalization, there have been only a limited number of exchange offers involving a company's offering to exchange with its own shareholders its holdings of shares of another public company.

Normally, in order to assure success of an exchange offer a sufficient premium must be offered to the divesting company's shareholders to induce them to tender their shares of the divesting company for the shares being distributed. In nearly every case a nationwide group of securities dealers and brokers is formed (the soliciting dealer group) to solicit exchange offers. The group is headed by a dealer manager. The soliciting dealers and the dealer manager are paid a fee for every share which is exchanged through their efforts.

The Rules and Regulations of the Securities and Exchange Commission require information regarding the securities and business of both companies involved in the exchange offer.

In addition to SEC clearance, the exchange offer must comply with the Blue Sky laws of various states.

It is understood that if ITT itself were to offer to exchange its Avis shares with its common stockholders it would also have to offer the shares to its holders of Series N Preferred Stock. The common stock equivalent of the Series N Preferred totals 12,064,000 shares held by approximately 35,000 record and beneficial owners. However, it is not certain that the Trustee would be under the same legal requirement as ITT and, therefore, this memorandum assumes the offer is made to the ITT common shareholders only.

We believe that an exchange offer would not be in the best interests of Avis and its shareholders for the following principal reasons.

1. An exchange offer would put severe pressure on the price of Avis shares.

We estimate that under the most favorable basis possible at this time a premium of 15% - 20% would need to be provided ITT stockholders in order for an exchange offer to be successful. With ITT common selling at $18.00 and Avis around $7.00 a ratio of about 3 Avis shares for each ITT share would be considered minimally appropriate. The premium would thus be 16.7%. (3 x 7 = $21 - $18 = $3 ÷ $18 = 16.7%.)

For such a 3 for 1 exchange offer to be successful only 1,529,000 ITT common shares (about 1.6%) would need to accept the offer. This seems like a very small number; however it must be noted that on this basis an ITT shareholder would be asked to give up $1.52 of dividends, covered by about $4.00 of earnings for $1.20 of Avis dividends not nearly as well secured.

Exchange plans generally require premiums to be offered in order to induce stockholders of one company to swap their shares for those of another. In this case, in view of the several disparities in investment characteristics the premium would have to be substantial. The exchange plan is likely to cause severe pressure on the market price of Avis shares both at the time of announcement of the exchange plan and at its termination. The initial pressure is likely to come from arbitrage activity and the pressure at termination from sales of Avis shares by former ITT holders who will have accepted the offer of exchange solely to profit from the premium offered. Any severe downward pressure on the Avis share price at this time, even though only temporary, would be detrimental to the present Avis shareholders and Avis itself.

As mentioned earlier, an immediate divestiture of Avis stock would result in prices that would not properly reflect the infusion of additional capital and the probability of significantly improved operating results that should become visible by mid-1975.

2. An exchange offer could result in an unduly large and costly Avis stockholder family.

Currently Avis has 2,200 record stockholders and ITT has approximately 160,000 record stockholders. In addition, it is understood that brokers hold of record shares for approximately 300,000 beneficial owners making a total of 460,000 beneficial owners of ITT common stock.

Assuming the unlikely event that each ITT holder wanted to accept the exchange offer, each ITT holder would be entitled to 0.04879 shares of Avis -- a most unattractive situation. At this rate, it would take 21 or more shares of ITT to be entitled to 1 Avis share.

A recent analysis of ITT stockholders shows that over 100,000 beneficial holders of ITT holding a total of approximately 800,000 shares, each own 21 shares or less and would, therefore, be required to accept a cash equivalent if they wished to dispose of their ITT shares; they would be unable to get Avis shares on the exchange except through purchase of fractional units.

Under any exchange offer Avis would probably end up having a very large family of very small stockholders, perhaps 100,000, far too large for its size and one probably not loyal to it or its management. The costs of servicing these shares would be significant. These costs would include payment of quarterly dividends, mailing and printing proxy statements, quarterly and annual reports and bank charges for stock transfer and stock registry services.

3. An exchange offer would be unduly costly.

We have made estimates of the cost of an exchange offer to ITT and these estimates range from $2,800,000 to $3,700,000, a median of approximately $3,250,000. This would include the printing of prospectuses, postage for a vast number of mailings, legal and accounting expenses, the cost of certificates and depository fees, and similar expenses. Such costs in our opinion would in effect be largely an economic loss with no particular advantage to ITT or Avis shareholders.

4. A successful exchange offer cannot be assured.

While the mechanics of effecting an exchange can be arranged, if cost factors and the high premium are of minor consideration, there is no assurance of success. Unlike an underwriting, in the normal exchange offer, there are no underwriters who will commit to take all shares not exchanged. An unsuccessful offer would cause irreparable harm to Avis and its present shareholders.

5. An exchange offer could leave Avis vulnerable to unfriendly takeover.

Avis, with a sudden deluge of nearly 5 million additional shares (about 1 1/2 times its public "float") in an unreceptive market, could become a relatively easy mark as a takeover target. Such a condition would not be in the best interests of the company or its shareholders.

In our opinion, an exchange offer would have few if any short or long term benefits for Avis and its present public shareholders. It is, therefore, our conclusion that an exchange offer should not be considered at this time as it would definitely not be in the best interest of the shareholders of Avis or the company.

IV. OTHER DISPOSITION METHODS

Trustee Order No. 1 also directs the Trustee to report on alternative disposition methods within 60 days (March 7, 1975).

If we assume that ITT will furnish additional capital of $17,295,000 to Avis it is our opinion that the Avis management will not be able to make a good and thorough report to its stockholders on its 1975 financial and operating plans by March 7, 1975.

As we mentioned earlier we do not feel that the viability of Avis is at all threatened by not immediately disposing of the

Avis shares, whereas the possibility is very great that the interests of present Avis shareholders could be greatly harmed by an immediate and hasty divestiture.

The many and varied divestiture possibilities can continue to be reviewed, developed and weighed. Just what divestiture method may ultimately be best for all concerned cannot be determined at this time.

It is our plan to continue to analyze all the various divestiture alternatives that come to the attention of the Trustee and to continually update and reevaluate in detail the various plans that have been previously developed and such new plans as we think may prove to be attractive and worth further exploration.

Raymond S. Troubh

Ora C. Roehl

Report No. II to Richard
Joyce Smith, Trustee

February 18, 1975

From: Raymond S. Troubh
Ora C. Roehl

In our February 3, 1975 report we commented on Avis's need for additional capital. We listed a number of yardsticks by which the company's need for capital could be measured and we concluded that we could make no firm conclusions as to Avis's future viability without assurance that additional capital would be forthcoming. We also expressed concern about the possible unfavorable reaction of the company's banks and other lenders to further delay.

The only possibility for obtaining additional equity capital within the time required has been the probable purchase by ITT of the $17,295,000 of equity capital agreed to in August of 1974. As this agreement was reached in mid-1974 we have also been concerned as to whether or not $17,295,000 would be sufficient to meet the capital needs of mid-February 1975.

Since our last report there have been two developments that have answered the principal current questions we have had concerning Avis's viability in the period immediately ahead.

1. We understand that negotiations with ITT have resulted in an agreement whereby ITT will purchase 1,487,000 shares of Avis common stock at a price of $11.63 for a total cost of $17,295,000. (The Trustee upon the conclusion of this transaction will hold 4,587,000 shares of Avis's 7,487,000 shares of outstanding stock, or 61.27%.)

2. Based, in part, on further discussions with representatives of Avis management we believe that the infusion of the additional equity of $17,295,000 will resolve Avis's immediate financial needs and enable it to make a good beginning in its transition from being an ITT subsidiary to becoming a competitively strong independent operating company.

We believe that as Avis's immediate financial problems give promise of being resolved, management should now be given time to demonstrate Avis's future viability and its ability to significantly increase its general competitive strength.

EXHIBIT B

As improvement in Avis's operations becomes more evident to the financial community, a much better climate should emerge for the disposition of the Avis stock to the substantial benefit of Avis, its public shareholders and the public it serves.

In the Trustee's first report to the Court dated February 4, 1975, it was indicated that another progress report would be presented on March 19, 1975. With the rather rapid conclusion of the negotiations with ITT it appears that report number two can be presented to the Court prior to March 19, 1975.

If a decision were made by the Court authorizing the Trustee to continue to hold the Avis stock for a reasonable period of time, questions as to an immediate divestiture would be resolved and certain pressures would be alleviated for the present thus allowing the Avis management to concentrate on managing the company.

I. AVIS'S PLANS FOR 1975

In our February 3, 1975 report we touched upon a number of problems that require the attention of the Avis board and the management before any really satisfactory final disposition plan can be developed.

In recent discussions with management we have again reviewed these problems in more detail especially the company's capital needs and its plans for improving operations in 1975. The following highlight comments on Avis's plans for 1975 will indicate in a general way what we feel management can accomplish during the year and why we expect that 1975 should be a year of significant progress.

As we mentioned earlier we have had some question as to the adequacy of the additional capital that Avis will obtain from ITT as there have been a number of developments since mid-1974, when the $17,295,000 figure was first determined, that have affected Avis's capital requirements.

For example, the shuttlers' case has required an unexpected $2,800,000; significant reserves had to be established for other possible legal claims; pension law changes may require an estimated $500,000; and certain expenditures such as the expansion of Avis facilities at the Newark Airport have shown major increases. (The Newark costs increased from an estimated $1,600,000 to $3,300,000.)

Management has again carefully weighed their capital needs and we are assured that while demands on capital have increased since mid-1974, the operations of the company are sufficiently flexible so that the addition of $17,295,000 of equity will allow the company to take many steps forward towards becoming a successful and competitive independent operating company.

The infusion of the additional equity by ITT will hopefully give the company breathing room under the loan agreements and permit, if needed, additional temporary borrowings.

The company's management has made many studies to determine the most desirable capital structure for the company and how it might be achieved, and these explorations, which include possible innovative and more flexible loan arrangements with automobile manufacturers, are continuing. While management's relations with the company's banks and the insurance companies are well maintained, we still suggest that it would also be helpful if the Trustee were to meet with the company's lenders in the near future.

Significant operating improvements and savings are expected in 1975. Many of the factors that affected 1974 earnings such as the prime rate increase, increases in fuel costs, price controls through April, the energy crisis which reduced travel, general price inflation, the shuttlers' decision and the special operating problems in Canada and in the truck leasing business will not have as great an impact in 1975 as they did in 1974. The economic climate of 1975 appears to be improving which should also hopefully be a plus factor, as 1974's adverse economic and monetary conditions had a severe effect on Avis's 1974 results.

To give a better understanding of possible improvement potentials here are a few comments on certain specific areas where improvement is expected in 1975.

1. A decline in interest rates is expected. For a highly leveraged company such as Avis a decline in the present lending rate can have a significant favorable effect on earnings per share. Based upon 1974 bank borrowings, a one percent change in the prime rate can have an annual pre-tax impact on Avis of $1,200,000. Savings also would be forthcoming in the Chrysler lease arrangements. The unknown factor is, of course, the extent of the interest rate change over the entire year.

2. The Canadian situation is slowly coming under control. Borrowings will be reduced as equity money replaces debt. Excess properties are being sold off; management is being replaced. Weaker cities are being sold to franchisees and it is management's expectation

that the 1974 loss of $2,700,000 can be reduced to under $1,000,000 and that a near term breakeven in Canadian operations is possible.

3. Truck operations are being consolidated and revitalized. Substantial write-offs were taken in 1974 and reserves have been set up for 1975 so that the 1974 losses of as much as $600,000 will not be repeated in 1975.

4. Economies originally envisioned by the Wizard system are slowly beginning to be felt. Additionally, it may be that accounting rule changes will reduce the Wizard charges for 1975 by approximately $550,000 after tax. However, the accounting changes are still to be approved by the SEC.

5. A cash conservation program is also underway and it is hoped that total cash requirements may be reduced by as much as $5,000,000 by August 1975. Such a reduction would, of course, mean a reduction in interest charges of about $500,000.

Many other management programs are also underway aimed at improving overall operating efficiencies including such items as better fleet utilization, reductions in management overhead and improvements in marketing strategies and advertising.

The company's first annual report since the ITT stock was conveyed to the Trustee, covering the year 1974, will soon be issued. This will give the company the opportunity to tell its shareholders and investors generally about its operating plans for 1975. Other programs for improved shareholder relations and for better relations with the financial community are also being considered.

As mentioned in our February 3, 1975 report, the improved results should become visible by mid-1975. Avis's first 1975 quarter is expected to be under 1974 -- but operating income for the entire year 1975 is currently being budgeted at $7,100,000 compared with $4,000,000 for 1974. Per share earnings in 1974 were 64¢ and with the increased number of shares they are estimated at 91¢ for 1975. (However, 1974 earnings and estimates for 1975 are still subject to some change, pending an SEC decision as to the accounting method to be used for the Wizard charges.)

Given certainty of direction by the new board of directors and freedom from the countless divestiture worries and intrusions of previous years, management should hopefully be able to devote itself to managing the business. This is a non-quantifiable effect, but it is certainly a positive one.

II. DIVESTITURE FOLLOW-UP

As we indicated in our February 3, 1975 report, it is our plan to continue to analyze all the various divestiture alternatives that come to the attention of the Trustee and to continually update and reevaluate in detail the various plans that have been previously developed and such new plans as may prove attractive and worth further exploration.

In connection with the purchase of the $17,295,000 of additional equity in Avis by ITT, we understand that the Trustee proposes to agree, subject to Court approval, that he will make no public offering of the Avis stock during the next year or accept any private offer of less than the $11.63 per share that ITT has agreed to pay Avis. Both of these intentions are subject to the Trustee's obligation to consider all offers and options for the disposition of the Avis stock which he may believe to be in the best interests of all Avis shareholders.

It is our opinion that the agreement to delay the divestiture of the Avis stock for a year will be beneficial and in the best interests of Avis, its public shareholders and the general public, as it is our expectation that it will require about that much time for the company's management to demonstrate Avis's viability as an independent operating company. If the company makes the progress expected it may well be that the price of Avis stock could exceed the $11.63 before the end of 1975.

If Avis is able to improve its operations and its capital structure and it becomes a completely viable competitive independent operating company, it may well be that the interests of its shareholders, customers and the general public would best be served by it remaining an independent entity.

Under such conditions it is possible that the best final divestiture plan would be a series of two or three underwritten public offerings. If as the year progresses it appears that Avis's operating results and its outlook for the future are going to be quite favorable, it may be desirable to alert the investment banking industry to Avis's progress so as to develop their interest in possible future underwritings.

The Trustee would, of course, continue to retain all the various divestiture options, such as an especially attractive private sale, even though he were to explore the feasibility of a series of public underwritings or to even dispose of some stock via a public offering.

In conclusion, if the Court approves the Trustee's agreement with ITT (and thus the philosophy of divestiture suggested herein), we expect to continually monitor the results being achieved by Avis to determine if the company is meeting its improvement goals or is running into unforeseen difficulties and problems that may require some change in the orderly divestiture plans we now envision.

We shall also continue to check the trends in the securities markets and the nation's economic progress and climate in an effort to anticipate any new, unforeseen outside economic or market factors that may significantly affect the viability of Avis.

We shall, of course, as we mentioned earlier also call your attention to new and possibly attractive divestiture alternatives that may arise which may require earlier final divestiture action than is now foreseen.

As our studies and reviews continue, we plan to report to you periodically as you may request or whenever any situation arises which seems to warrant a special report.

Raymond S. Troubh Raymond S. Troubh

Ora C. Roehl

April 18, 1977

MEMORANDUM

TO: RICHARD JOYCE SMITH, TRUSTEE

FROM: ORA C. ROEHL
RAYMOND S. TROUBH

You have advised us that the Board of Directors and Management of Avis, Inc. propose to submit to Avis shareholders at the forthcoming Annual Meeting a series of amendments to the Avis By-laws and Certificate of Incorporation which are intended to discourage attempts to obtain control of Avis by acquisition of shares through public tender offers or other transactions not approved by the Company's Board of Directors.

Management's rationale for the proposed amendments is outlined in the "Preliminary Proxy Materials" which also contain the specific details of the proposals, Items (2) and (3) therein. We have reviewed the Preliminary Proxy Materials and the proposed amendments in detail.

You have requested our advice as to the possible impact, if any, of the adoption of these proposed amendments

EXHIBIT C

upon a public offering of Avis shares, currently held by you as Trustee pursuant to Court Order. You have advised us that it is your present intention to dispose of such shares through public underwritings using the services of a large group of investment bankers similar to the first such offering on May 27, 1976 of 1,250,000 shares at $9.25 per share (less underwriting commission of $.65 per share).

You presently hold 3,743,504 shares of Avis Common Stock constituting approximately 47% of the outstanding shares. We understand that you presently contemplate disposing of approximately 50% of your holdings in mid-1977, such timing and amount subject, of course, to market, monetary and economic conditions generally.

We have acted as your financial advisers since your appointment as Trustee and have reported to you from time to time regarding Avis affairs generally and have considered with you plans for the ultimate distribution of the shares. In our report to you dated December 15, 1976, we noted your intent to "promote a viable and independent Avis" and suggested "to preserve that independence, we believe that Avis should take steps to strengthen its charter and by-law provisions against hostile takeovers".

We remain of that opinion and believe that the adoption of Items (2) and (3) will in no way be detrimental to or impede the plan for public distribution of the remaining shares held by you. We are confident that a group of investment banking houses similar in size, stature and capability to those of the first such sale, will be agreeable to handling the sale of the remaining shares whether or not Avis shareholders adopt the proposed amendments.

The Avis proposals are not unique; a large number of publicly-held corporations have adopted similar proposals (and in some cases more restrictive ones). We believe many more will do so and, based upon our professional experience as financial consultants, we do not believe that the adoption of such proposals will materially adversely affect their financing capabilities or materially adversely affect the market prices of their securities.

Accordingly, we recommend that you vote your shares in favor of Items (2) and (3).

ORA C. ROEHL
RAYMOND S. TROUBH
Raymond S. Troubh

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, Plaintiff, -against- INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY, Defendants, and AVIS, INC., Defendant-Intervenor.	:	Civil Action No. 13,320 Before The Honorable M. Joseph Blumenfeld, D.J. **REPLY AFFIDAVIT**

STATE OF CONNECTICUT)
: ss:
COUNTY OF HARTFORD)

RODERICK A. DOWLING, being duly sworn, deposes and says:

1. I am a vice president and general counsel of Fuqua Industries, Inc. ("Fuqua") and make this affidavit in support of the motion brought on by Order to Show Cause by Fuqua, the proposed intervenor herein, and to reply to the affidavits filed in opposition to the motion by John P. McEnroe ("McEnroe aff."), Eli Shapiro ("Shapiro aff."), John J. Scanlon ("Scanlon aff."), Colin M. Marshall ("Marshall aff."), Richard Joyce Smith ("Smith aff.") and Raymond S. Troubh ("Troubh aff.").

2. On this date, a report prepared by the firm of Bear, Stearns & Co. (the "Bear Stearns report") will be filed with the Court. The Bear Stearns report deals with the financial effects of the proposals contained in the Proxy Statement dated May 4, 1977 of Avis, Inc. ("Avis") and the effects of Fuqua's offer to purchase the common stock held by the Trustee (the "Trust Property") and its proposal regarding the future of Avis on the public shareholders of Avis, defendant International Telephone and Telegraph ("ITT") and Avis itself. I respectfully direct the Court's attention to the Bear Stearns report which I believe demonstrates that Avis' and the Trustee's assertions in opposition to the instant application are without basis in fact or economics.

I. Effect of the Avis Proposals on Avis Shareholders

3. The Bear Stearns report amply demonstrates that, even apart from their effect on the Fuqua offer, the proposals to be submitted to the Avis shareholders at the scheduled Annual Meeting (the "Proposals") are simply not in the best interests of Avis shareholders and will depress the market value of Avis stock (pp. 2-4).

4. Mr. Scanlon characterizes the Proposals as the "minimum necessary during the transition period" (Scanlon aff., par. 11). Mr. Troubh states that the Proposals have been adopted by "inumerable public companies" (Troubh aff., par. 17). However, the Bear Stearns report describes the Proposals as "extraordinary" compared to similar protective provisions adopted by other corporations:

....

> "The proposed amendment to the Certificate of Incorporation is extraordinary in that most corporations require either majority approval or, at most, two-thirds approval for merger proposals. Furthermore, a simple majority vote of corporate boards of directors is the most common requirement for recommending such approvals. This proposal, when combined with the proposed staggered board (on which the Trustee and his law partner would have different terms), and with other steps inhibiting a change of control (see p. 8), reduce the attractiveness of the Avis shares to sophisticated investors." (Bear Stearns report, pp. 3-4.)

5. Apart from their effect on the market price of Avis stock, the Proposals are manifestly inimical to the best interests of the Avis stockholders since, as the Trustee and Avis candidly concede, their purpose is to remove from the stockholders the decision to accept or reject offers such as Fuqua's and place such decisions in the hands of the Board of Directors, controlled by the Trustee. The effect of the Proposals is to supplant stockholder decision with decision by that one-third of the Board which the Trustee is assured of controlling for an extended period of time.

6. Furthermore, I note that the protestations by the various affiants that the Proposals were submitted in the best interests of Avis stockholders are belied by the procedure followed in the mailing of the Supplement to Proxy Statement (the "Supplement") to stockholders.

7. Mr. McEnroe's affidavit states that the Supplement was mailed on May 19 (par. 3). However, Mr. McEnroe's affidavit is critically silent as to whether or not Avis stockholders will receive the Supplement in time to take any meaningful action with respect to it by the May 25 Annual

Meeting. Nothing is stated in the affidavit with respect to where the Avis stockholders live, the number of days it takes for a mailing to reach them, and the number of days for the return of any communication from them to the company. Even more egregious is the omission from Mr. McEnroe's affidavit of the number of shares held by brokers. Brokers necessarily will have to mail the Supplement to their beneficial owners which, in turn, will make it more difficult for the beneficial owners to act on the information in the Supplement. If Avis and the Trustee, in submitting the Proposals to the Avis shareholders were legitimately concerned with the best interests of the stockholders, they would agree to a reasonable adjournment of the Annual Meeting in order to give the stockholders an opportunity to evaluate the information contained in the Supplement.

8. While contending that the Proposals are in the best interests of the Avis stockholders, the Trustee and Avis have only reluctantly in the Supplement begun to reveal the interest of the Trustee and his law firm in the Proposals. The stockholders have learned for the first time in the Supplement that Avis has filed a registration statement for a secondary offering of 2,000,000 shares by the Trustee (the "Secondary Offering"). Mr. McEnroe's affidavit is noticeably silent as to why this information was not contained in the initial Proxy Statement.

9. Not yet disclosed to the stockholders but disclosed in the Trustee's Memorandum in opposition to Fuqua's application is the linkage between the Proposals and the

Secondary Offering. At page 18 of his Memorandum, the Trustee states: "If the shareholders meeting is adjourned that [secondary] distribution would in all probability be suspended or delayed ..." (emphasis supplied). One might thus ask why if the purpose of the Proposals is not to perpetuate control of Avis by the Trustee should delay in adoption of the Proposals result in a delay in the Secondary Offering. The linkage between the Secondary Offering and the adoption of the Proposals is a further material fact which has not been disclosed to the stockholders in either the initial Proxy Statement or the Supplement.

10. Mr. McEnroe in his affidavit (par. 4) states that in his view the compensation paid to the Trustee and Whitman & Ransom is not material because the fees in question are paid by ITT, not Avis. However, I respectfully submit that what is material to the stockholders in voting on the Proposals is not who is paying these fees but the fact that the Trustee, Mr. O'Brien, and Whitman & Ransom are being paid and thereby benefiting from the continuation of the trusteeship.

II. The Performance of Avis Under the Trustee and the Effect of the Overhang of the Trustee's Shares

11. The opposing affidavits depict the Trustee's holding of the control block of Avis stock and sale of such block in a series of public offerings as being in the best interests of Avis shareholders. In fact, as the Bear Stearns report states, in January 1976, the Avis price/earnings ratio fell sharply relative to the Standard & Poor's price/earnings ratio (Bear Stearns report, p. 7, Ex. A) and Avis' relative

price/earnings ratio has remained below its 1975 level since that date. January 1976 was, of course, the date when Trustee Order No. 3 was signed, which directs the Trustee to dispose of the Trust Property by way of a series of public offerings.

12. I note that Mr. Scanlon in his affidavit states that the overhang of the unsold stock in the Trustee's hands has had a depressing impact on the market price of Avis stock (Scanlon aff., par. 8). Sale of the Trustee's shares to Fuqua would of course remove this factor tending to depress the market value of the stock. Extension of the period of trusteeship of course not only extends the period of overhang, but causes Avis to spend substantial sums in legal fees and printing expenses each time a block of the Trustee's shares is registered and then sold.

13. Mr. Marshall states that after appointment of the Trustee, Avis' profits "soared" (Marshall aff., par. 6). Mr. Marshall further states (aff., par. 23) that Avis' "independence gives it a distinct competitive advantage over the other rent a car companies." As the Bear Stearns report points out, Mr. Marshall's assertions in this regard are not borne out by Avis' profits relative to those of its competitors:

> "The sales, net income, and net income as a percentage of sales of Avis, Hertz and National Car Rental for the period 1972-76 are presented in Exhibit B. The table shows that, although Avis' sales gain of 48% during the four-year period from 1972 to 1976 was better than the sales gain recorded by its two largest competitors, its earnings increase of 103% was less than that obtained by either of the other firms. In

> 1972, Avis' net profit margin of 2.8% was equal to National's and somewhat better than that of Hertz; although Avis' net margin improved to 3.8% in 1976, Hertz and National had margins of 5.3% and 4.8%, respectively." (Bear Stearns report, pp. 10-11.)

14. Mr. Marshall further raises fears of loss of business by Avis from unspecified competitors of Fuqua (Marshall aff., par. 24) and the effect on Avis if it were to fall into the hands of owners who knew nothing about the rental business (Marshall aff., par. 26). However, the above quoted statistics indicate that Mr. Marshall's fears are unfounded as both Hertz and National, owned by RCA Corporation and Household Finance Corporation, respectively (Bear Stearns report, p. 6) have outperformed Avis.

15. Mr. Marshall further expresses fears regarding the effect of Fuqua's offer on Avis' management (pars. 26-28). Fuqua has expressed no intention to change Avis' management. Further, the Bear Stearns report states that Fuqua's management would be superior to an Avis management locked in pursuant to the Proposals to be submitted to the stockholders at the Annual Meeting:

> "The proposed 'locked-in' management of Avis, which appears to make it invulnerable to change through either shareholder action or outside take-over, contrasts sharply with the circumstances at Fuqua. Fuqua's history has consisted of a dynamic, performance-oriented management group. In exercising corporate democracy, Fuqua has not shielded its management with such steps as a staggered board and disproportionate voting provisions with respect to outside take-overs." (Bear Stearns report, p. 14).

III. Effect of the Fuqua Proposal on Avis Shareholders and Nature of a Combined Company

16. The Board of Directors of Fuqua has now determined that should the Fuqua offer to purchase the Trust Property be accepted, stockholders of Avis will be offered, within thirty days of the purchase of the Avis shares, a tax-free merger between Avis and Fuqua on a common-for-common basis. The Bear Stearns report describes the resulting corporation as follows:

> "The combined company would have pro forma profits before taxes in the range of $60 million, and with an indicated market value of its common equity in the area of $200 million, the vast majority of which would be in the floating supply. This would qualify it for such generally favorable events as broader institutional interest, listed options, improved research coverage and good market liquidity." (Bear Stearns report, p. 10.)

Thus, the fear of Mr. Shapiro (aff., par. 10) that Avis' stockholders will be coerced into accepting a security less attractive to them than their Avis shares is unfounded.

17. Mr. Troubh states that Fuqua securities are speculative and "as a professional investment advisor" he would not recommend their acceptance in exchange for Avis shares [Troubh aff., par. 19(e)]. Mr. Troubh's opinion regarding the quality of Fuqua securities is not shared by an extensive group of prominent investment banking firms. As the Bear Stearns report states:

> "The standing of Fuqua's securities in the eyes of the financial community is reflected in the list of prominent

> investment banking firms who, on March 17, 1977, comitted their own capital toward a $60 million underwriting of Fuqua senior subordinated debentures and common stock. This group, headed by Lehman Brothers Incorporated, included as major underwriters:
>
> Bache Halsey Stuart Inc.
> Bear, Stearns & Co.
> Donaldson, Lufkin & Jenrette
>   Securities Corporation
> Drexel Burnham & Co. Incorporated
> Goldman, Sachs & Co.
> Kidder, Peabody & Co. Incorporated
> Loeb Rhoades & Co. Inc.
> Merrill Lynch, Pierce, Fenner
>   & Smith Incorporated
> Paine, Webber, Jackson & Curtis
>   Incorporated
> Reynolds Securities Inc.
> The Robinson-Humphrey Company, Inc.
> Shearson Hayden Stone Inc.
> Smith Barney, Harris Upham & Co.
>   Incorporated
> Warburg Paribas Becker Inc.
> Wertheim & Co., Inc.
> White, Weld & Co. Incorporated
> Dean Witter & Co. Incorporated"
>
> (Bear Stearns report, p. 11.) .

18. Mr. Troubh further expresses a fear that the merged company will be stigmatized as a conglomerate (Troubh [aff., par. 20(a)]. A merged company would esentially be a transportation company. As the Bear Stearns report states:

> "Furthermore, the combined companies would not fall into the 'conglomerate' category, as more than half of its profits would be from Avis' business and more than two-thirds of its profits from the transportation business. This represents a far more homogeneous earnings stream than that of such well-known companies as RCA, ITT, and Transamerica." (Bear Stearns report, p. 10.)

19. Mr. Troubh states that one of his reasons for concluding the Fuqua offer is without merit is that he fears the market price of Avis will fall below the price

offered to the Trustee. However, as Avis points out in its Memorandum [p. 19 n. (*)], since announcement of the Fuqua offer, the market price of Avis has risen not fallen. In any event, the Avis stockholders will not be affected by market fluctuations in the price of Avis stock, since Fuqua is committed to pay them equivalent value in common stock to the price paid the Trustee.

20. A further reason stated by Mr. Troubh for his negative recommendation is his fear of the antitrust consequences of a Fuqua-Avis merger [aff., par. 19(b)]. As Mr. Troubh does not state his qualifications as an antitrust expert and as the United States is a party to this action, I respectfully suggest that Mr. Troubh defer to the Department of Justice with regard to the antitrust consequences of the Fuqua proposal. I am confident that no such adverse antitrust consequences will be found to exist.

22. Mr. Troubh further fears that the Avis stockholders will be left "in a quandry for an indefinite time, subject to the fluctuations of the market" [aff., par. 19(d)]. However, the Fuqua Board's decision to make an offer to the Avis stockholders within thirty days of the proposed purchase from the Trustee has obviated this criticism. Further, as noted above, the Avis stockholders are in no way at the mercy of the market--they will receive value at least equivalent to that given to the Trustee.

23. Mr. Troubh further argues that Fuqua's proposal fails to give recognition to values inherent in a control block [aff., par. 19(b)]. I find Mr. Troubh's concern in

this regard difficult to understand since he has previously stated in his reports to the Trustee that sale of the Trust Property would command not a premium but a discount. In any event, Fuqua's proposal does include a premium over market and book value. Further, under Fuqua's proposal, this premium will not inure solely to the benefit of ITT but will be shared with the public since Fuqua will offer the public value at least equivalent to that offered ITT. Under the Trustee's proposal to sell the Trust Property into the market, neither ITT nor the public will receive such a premium.

24. I respectfully suggest that Mr. Troubh has had insufficient time to evaluate the Fuqua offer. Mr. Troubh describes his and Mr. Roehl's activities in his initial evaluation of Avis as follows:

> "During the past few weeks we have reviewed various records and reports covering the divestiture of Avis by ITT; we have visited with ITT and Avis officials; we have visited the offices of Avis and discussed the operations of the Company in some detail with its financial and operating officers ...." (Troubh aff., Ex. A, p. 1.)

I respectfully suggest that if the Trustee and Avis were to agree to a postponement of the Annual Meeting to give Mr. Troubh sufficient time to visit with Fuqua officials and to visit our offices to discuss the operations of Fuqua, Mr. Troubh might well reach a different conclusion with regard to the Fuqua offer.

25. My above remarks with regard to Mr. Troubh also apply to Mr. Story, whom Mr. Marshall describes as a

representative of the Avis licensees (Marshall aff., pars. 18-22). I sincerely doubt that Mr. Story--who apparently believes that Fuqua resembles ITT in some manner and that Fuqua executives would have no interest in vehicle rental--has any more than a passing acquaintance with Fuqua, probably gained from Mr. Marshall. I respectfully submit that postponement of the Annual Meeting to give the licensees some opportunity to become acquainted with Fuqua could well lead to a different opinion on the part of Mr. Story.

26. Mr. Troubh further states that affiliation with Fuqua would hinder Avis in its credit relationship [Troubh aff., par. 20(d)]. The Bear Stearns report reaches the opposite conclusion, stating that, "The combined company would be a well-capitalized, vigorous business entity with substantial access to capital and a broad public market for its common stock." (Bear Stearns report, p. 10.)

27. Mr. Marshall raises the specter of Avis' loans being called should Fuqua purchase the Trust Property (Marshall aff., pars. 8-13). I am sure that Mr. Douglas of the Irving Trust Company ("Irving Trust") will, as a prudent banker, review the financial condition of Fuqua, should Fuqua acquire the Trust Property. I am equally confident that upon such review, the Revolving Credit Agreement will not be terminated. If termination would result from acceptance of Fuqua's offer, I believe the Court should be informed of this fact in an affidavit or testimony from Mr. Douglas. Mr. Marshall's conclusion that Fuqua's financial performance has been weak and spotty (aff., par. 11) is based upon a concededly brief examination and is contradicted in all respects by the Bear Stearns report.

28. Mr. Marshall further raises the possibility that, Avis' stock upon acceptance of the Fuqua offer, would be delisted from the New York Stock Exchange ("NYSE"). This statement appears to be purely Mr. Marshall's opinion, unsupported by any statements from the NYSE. The Bear Stearns report reach an opposite conclusion:

> "However, we consider it unlikely that the proposed acquisition by Fuqua would trigger adverse action by Avis' bank lenders, and we also consider it unlikely that the purchase of 47% of the Avis shares by Fuqua would induce the New York Stock Exchange to delist the Avis shares. In view of Fuqua's announced intent to offer a tax-free merger to Avis' public shareholders, the question of delisting is likely to become moot. However, it should be noted that, even if Avis were to be delisted from the New York Stock Exchange, it would be likely to be eligible for listing on the American Stock Exchange and/or one or more of the several regional stock exchanges. We have reviewed the price action of shares delisted for non-financial reasons from the New York Stock Exchange in the past three years and subsequently listed on the American Stock Exchange. In each case, the price action of the shares subsequent to listing on the American Stock Exchange was favorable in comparison to prior price action on the New York Stock Exchange." (Footnote omitted; Bear Stearns report, pp. 8-9.)

Mr. Marshall, unlike the Bear Stearns report, simply ignores the possibility of an American Stock Exchange listing.

29. Mr. Marshall further seeks to bind the Trustee, this Court, and the United States by an alleged representation by ITT that no more than 10% of the ITT block of Avis stock would be sold to a single shareholder (Marshall aff., par. 17). I am aware of no order of this Court which gave ITT any authority to make such a representation. If ITT did indeed make such a representation, I suggest that any ensuing litigation will be directed against ITT rather than Avis.

IV. The Alleged Delay in Fuqua's Offer

30. Mr. Marshall and the other affiants allege that Fuqua has unduly delayed in making an offer for the Trust Property. However, the timing of the offer was determined solely by the attempts by Avis and the Trustee to install the extraordinary anti-take-over provisions they seek to have adopted at the Annual Meeting and their belated release of the Proxy Statement informing the public that such proposals would be presented.

31. Fuqua's officers did not learn of the Proposals to be presented at the Annual Meeting until May 12 by means of an announcement in the Wall Street Journal. At this time for the reasons outlined in my prior affidavit, Fuqua realized that should these extraordinary and unanticipated Proposals be adopted no offer to purchase the Trust Property would be possiable. Obviously, for a transaction of this magnitude, prior approval of the Fuqua Board of Directors was required. Such approval was obtained on May 14.

32. On May 16, a letter describing Fuqua's proposal was drafted and delivered to the Trustee on May 17. On May 18, the instant application was presented to this Court with copies of the moving papers being supplied to counsel for Avis and the Trustee that day. Thus Fuqua has moved expeditiously and should not be penalized for the Trustee's and Avis' sudden and unexpected attempt to absolutely preclude offers such as that of Fuqua's.

33. Further, it is unmistakeably clear at this point that the Trustee's position is that once Trustee Order No. 3

was signed on January 14, 1976, he would not entertain any third-party offer to purchase the Trust Property. Thus, even had Fuqua made its offer at an earlier date, the Trustee would have refused to consider it.

34. Thus, several of the affiants seem to misunderstand the Trustee's position. Typically, Mr. Marshall states: "Had Fuqua made its proposal at any time during the past year and a half, the shareholders of Avis, the Trustee and the Court would have had ample time to consider it." (Marshall aff., par. 30). Mr. Scanlon states: "No member of the Board has the slightest desire to oppose such a transaction at a fair and reasonable price." (Scanlon aff., par. 5.) Mr. Scanlon further states that the Proposals were introduced because "it seemed desirable to the Board to provide time to the Board and to the stockholders to appraise any offer which might be made prior to the time when the depressing influences on the stock price for Avis had been dissapated [sic] and also time to give full consideration to all available offers." (Scanlon aff., par. 10.) Finally, Messrs. Troubh and Roehl stated in their report to the Trustee dated December 15, 1976:

> "We recognize that you may, from time to time, receive offers for all or part of your Avis holdings. Some of these offers may include similar offers to the public shareholders. While we shall continue to examine each such offer on its merits, we believe that, absent extraordinary circumstances, you should maintain your present course of action."

35. All of the above-quoted individuals thus appear to misapprehend the Trustee's position that pursuant to Trustee Order No. 3, he may not consider third-party offers

(Smith aff., par. 44.) I, however, agree with the above-quoted individuals that the Trustee should consider the Fuqua offer and respectfully request that the Annual Meeting be delayed so that the Trustee may consider the offer.

V. Effect of the Fuqua Offer on ITT

36. Mr. Shapiro purports to demonstrate that the Trustee could obtain a greater amount for the Trust Property through his policy of public offerings than through acceptance of the Fuqua offer (Shapiro aff., pars. 13-15). Mr. Shapiro's analysis seems to depend on a scenario which he himself describes as "not difficult to imagine" (Shapiro aff., par. 15). In any event, the Bear Stearns report demonstrates that Mr. Shapiro's analysis is incorrect.

> "ITT would retain 1,743,504 shares following the completion of the proposed underwriting. Let us assume (a) that the next underwriting would be in about 12 months and would have comparable underwriting costs; (b) that the annual dividend of Avis would be increased to $0.60 per share ($0.555 net of taxes to ITT); and (c) that cash is worth 8% (4% net of taxes) per year to ITT. Given the above assumptions and an assumed $14 offering price in 1977, the market price of Avis stock would have to increase to $20 over the 12 months for ITT to realize, through a public offering one year later, the total proceeds of $58 million equivalent to the Fuqua offer. Thus, from the recent price of Avis stock of $14 per share, a price increase of 43% over the next 12 months would be necessary just for ITT to break even. Based on the $12-1/8 price at the time of the announcement, it would have been necessary for the Avis shares to sell at $22-3/8 after 12 months to realize an equivalent result." (Bear Stearns report, pp. 12-13.)

Mr. Troubh's apparent opinion that the Trustee may realize more through a public offering than through acceptance of the Fuqua offer is so hedged and unsupported as to be valueless (Troubh aff., par. 12).

37. Mr. Shapiro ultimately appears to find two defects in the Fuqua offer: the premium offered is not high enough (Shapiro aff., par. 16) and the offer will encourage additional similar offers (Shapiro aff., par. 17). A· to the first objection, I submit that the Bear Stearns report demonstrates that the premium is sufficient (particularly in view of Mr. Troubh's stated opinion in the past that sale to a third party would be at a discount, not a premium). As to his second objection, the making of similar but higher offers would be to the advantage of Avis and its stockholders, and would seemingly thus be considered a favorable development by a director of Avis.

38. Fuqua seeks to delay the Annual Meeting so that this Court may reconsider Trustee Order No. 3 and so that the Trustee may in turn give due consideration to Fuqua's offer, rather than having it summarily dismissed on the basis of the limited evidence submitted to this Court in the opposing affidavits. I fail to see how such further consideration cannot be in the best interests of Avis and its stockholders.

WHEREFORE, it is respectfully requested that the present motion be granted in all respects.

RODERICK A. DOWLING

Sworn to before me this
day of May, 1977.

Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- -x

ROBERT PRATHER, :

Plaintiff, :

-against- :

AVIS, INC., RICHARD JOYCE SMITH, :
DRUMMOND C. BELL, RODNEY C. GOTT,
ROBERT W. HAACK, WILLIAM W. LYON, :
ROBERT C. O'BRIEN, ELI SHAPIRO,
OLCOTT D. SMITH, WILLIAM E. :
FRUHAN, JR., ALVA T. BONDA and
JOHN J. SCANLON, :

Defendants, :

- -x

Civil Action
No. 13,320

Before The Honorable
M. Joseph Blumenfeld, D.J.

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

INTERNATIONAL TELEPHONE AND :
TELEGRAPH CORPORATION and THE
HARTFORD FIRE INSURANCE COMPANY, :

Defendants, :

-and- :

AVIS, INC., :

Defendant-Intervenor :

- -x

STATE OF CONNECTICUT)
) ss:
COUNTY OF HARTFORD)

Gilbert E. Matthews, being duly sworn, deposes and says:

I am a limited partner of Bear, Stearns & Co., investment bankers, and annex hereto as Exhibit A our report of May 21, 1977 in connection with the above entitled matters and my personal qualifications as Exhibit B.

I wish to advise the Court of the following:

According to information received by telephone this morning from the manager of the Proxy Department of Bear, Stearns & Co,, Mr. William Garvey, the supplemental proxy material of Avis dated May 19, 1977 was received this morning (Monday, May 23, 1977) by a hand delivery from Irving Trust Company.

I am further informed that, upon receipt of this material, address labels for all stockholders for whom we hold stock were ordered and that the supplemental proxy will be mailed to the beneficial owners tomorrow.

I am also informed that the proxy material dated May 4, 1977 had not been received by May 11. It had to be specifically requested on that date by us and was not received until May 16, 1977. For the Court's information, I have been informed that Bear, Stearns & Co. holds 75,440 shares of Avis common stock for eighty-six beneficial owners.

Gilbert E. Matthews
Gilbert E. Matthews

Sworn to before me
this 23rd day of May, 1977.

June S. Breen
Notary Public

JUNE S. BREEN
NOTARY PUBLIC
MY COMMISSION EXPIRES MAR [illegible]

Bear, Stearns & Co.
Corporate Finance
55 Water Street
New York, N.Y. 10041
(212) 952-5000

BEAR
STEARNS

MATTHEWS AFFIDAVIT
151a

Report on Behalf of

FUQUA INDUSTRIES, INC.

May 21, 1977

BEST COPY AVAILABLE

INTRODUCTION AND SUMMARY

We have been asked to consider (a) the financial effects of the proposal by Fuqua Industries, Inc. ("Fuqua") to purchase for $15.50 per share the 3,753,504 common shares of Avis, Inc. ("Avis") beneficially owned by International Telephone and Telegraph Corporation ("ITT") and held by Richard Joyce Smith as Trustee (the "Trustee"), and (b) the financial effects of the amendments proposed in the Avis proxy dated May 4, 1977. In the first part of this report, we discuss the impact on the market value of the common stock of Avis of the proposed amendments to Avis' By-laws and Certificate of Incorporation. In the second portion of this report, we discuss the prospective financial effects of Fuqua's offer upon (1) the public shareholders of Avis, (2) ITT, and (3) Avis itself.

In our judgment, the proposed amendments which would substantially discourage potential acquirers, would have an adverse impact on the market price of the Avis shares.

In our judgment, the acceptance of the Fuqua offer by the Trustee would not be detrimental to the public shareholders of Avis, to ITT, or to Avis.

FINANCIAL IMPLICATIONS OF THE AMENDMENTS PROPOSED IN AVIS' PROXY DATED MAY 4, 1977

In the Avis proxy material dated May 4, 1977, management proposed an amendment to the By-laws of Avis and an amendment to the Certificate of Incorporation of Avis. The proxy states, "The proposed amendments ... are intended, in general, to make more difficult, and therefore discourage, attempts by others to acquire control of the Company, through acquisitions of stock or otherwise, in transactions not approved by the Company's Board of Directors."

The proposal amendments, taken together with the proposed broad distribution of all but 22% of the outstanding Avis common stock, would have the effect of eliminating from the market price of Avis common stock the premium which would be paid by sophisticated investors for the shares of such a logical take-over candidate. This fact is conceded in the proxy material, which states as follows:

> "The effect of the proposed amendments described above could be to discourage a tender offer or takeover bid by a corporation, person or entity intending to acquire control of the Company through the acquisition of a substantial number of shares of the Company's stock followed by a forced merger or similar transaction, regardless of whether such transaction might be in the best interests of the Company and its stockholders. The proposed amendment would

> make it more difficult to effect such a transaction and might therefore discourage an attempt to do so. The proposed amendment would help protect the Company's public stockholders against the danger of a disadvantageous transaction between the Company and a substantial holder of the Company's stock or its affiliates, but the Board recognizes that a conflict of interest betweeen such a substantial holder and the public stockholders may not exist in all situations and that certain transactions which might be discouraged by the proposed amendment might be in the best interests of the Company and its stockholders." [Emphasis added.]

Since the negative vote or abstention of only five directors would require a positive vote by 80% of Avis' shares to accept a take-over bid, prospective bidders would be deterred, particularly when such bidders observe that at least three directors could appear to have substantial personal interests in retaining their positions independent of the best interests either of Avis or its shareholders.

The proposed amendment to the Certificate of Incorporation is extraordinary in that most corporations require either majority approval or, at most, two-thirds approval for merger proposals. Furthermore, a simple majority vote of corporate boards of directors is the most common requirement for recommending such approvals. This proposal, when combined with the proposed staggered board (on which the Trustee and his law partner would have different teams), and with other steps inhibiting a change of control (see p. 8), reduce the attractiveness of the Avis shares to sophisticated investors.

Contrary to assertions by the Trustee's financial advisors that these changes "redound to the ultimate benefit of shareholders", the force and effect is to transfer shareholder rights to a board that has a negligible financial stake in the Avis common stock. The ultimate protections for Avis shareholders lie in full disclosure requirements under the securities laws, their rational selection of economic alternatives without reference to the personal best interests of Avis' board members, and the freest possible market competition for Avis shares.

FINANCIAL ISSUES WITH RESPECT TO THE SALE AVIS COMMON STOCK HELD BY THE TRUSTEE

(1) Impact on Public Shareholders of Avis

The market price of Avis common stock has been adversely impacted by the overhang of the shares held by the Trustee, a fact which has been conceded in various reports by the Trustee's financial advisors, Mr. Raymond Troubh and Mr. Ora Roehl. Additional factors hampering the market acceptance of Avis common stock include uncertainties surrounding future United States energy policy, the recent uptrend in short-term interest rates, the low dividend yield relative to other yields available in the financial markets, the probable need for additional equity financing, structural changes in the securities industry, and the prospective loss of take-over bid potential as a result of the proposed amendments to Avis' By-laws and Certificate of Incorporation.

Given the importance of the issues surrounding energy policy, this uncertainty seems likely to be a continuing factor. Given the Carter Administration's apparent desire to curb inflation, the outlook for short-term interest rates over the coming year points towards higher levels.

At the current annual dividend rate of $0.40, and based on the price of $14 prior to Fuqua's announcement, Avis common stock yields only 2.86%. This compares with 4.3% for the Standard & Poor's Industrial Index, 8.4% for A-rated industrial debentures, 5.1% for ITT common, and 8.6% for ITT 8.9% sinking fund debentures due 1995. The corporations owning Avis' principal competitors currently have indicated dividend yields of 4.5% for Transamerica Corporation (parent of Budget Rent A Car), 3.8% for RCA Corporation (Hertz), and 6.0% for Household Finance Corporation (National Car Rental).

Avis is in a capital-intensive business and our analysis, as well as past reports by the Trustee's finanancial advisors, suggest the desirability for Avis of raising additional equity capital. The likelihood of such transactions lead investors to apply some discount to Avis' earnings multiple, and also discourage investors from aggressively bidding up the price of the shares.

Furthermore, the securities industry has been going through dramatic structural changes which have reduced both the number of sales personnel and the size of research staffs. Because of these changes, the securities of small to medium-sized companies have often been neglected because of the greater efficiency attached to dealing principally in securities of larger companies with broader investment interest.

Prior to the announcement in January 1976 that the Trustee had obtained court approval to distribute the Avis shares beneficially owned by ITT through a series of public offerings, many sophisticated investors and analysts considered the sale of contol of Avis to a major corporation to be a possible course of action for the Trustee. A comparison of the price/earnings ratio of Avis with that of the Standard & Poor's Industrial Index ("S&P") from 1975 to date shows that the Avis price/earnings ratio as a percentage of the S&P price/earnings ratio fell sharply after January 1976, and Avis' relative price/earnings ratio has consistently remained below its 1975 level ever since. (See Exhibit A). In our judgment, the 1975 Avis market prices reflected a premium attributable to the potentiality of a take-over of Avis.

As the only major independent car rental company, Avis common stock should offer a special appeal by reason of its take-over potential. Since the pattern in the industry has been to combine this type of business with the resources of a major corporation, it would be logical to to assume that Avis is a prime candidate for such a takeover. However, as discussed above, the proposed amendments if adopted, would make such a future combination highly improbable in the eyes of sophisticated investors.

The inclusion of a provision in Avis' bank agreements of a provision enabling the banks to declare their loans due and payable in the event of ownership of more than 50% of the shares by anyone other than the Trustee is taken by sophisticated investors as a warning flag that the management of Avis is prepared to resist take-over efforts, as is the extraordinary provision in Avis' agreement with the New York Stock Exchange which would permit such Exchange to delist Avis' shares if a buyer acquires as little as 10% of the common stock.

However, we consider it unlikely that the proposed acquisition by Fuqua would trigger adverse action by Avis' bank lenders, and we also consider it unlikely that the purchase of 47% of the Avis shares by Fuqua would induce the New York Stock Exchange to delist the Avis shares. In view of Fuqua's announced intent to offer a tax-free merger to Avis' public shareholders, the question of delisting is likely to become moot. However, it should be noted that, even if Avis were to be delisted from the New

York Stock Exchange, it would be likely to be eligible for listing on the American Stock Exchange and/or one or more of the several regional stock exchanges. We have reviewed the price action of shares delisted for non-financial reaso from the New York Stock Exchange in the past three years and subsequently listed on the American Stock Exchange.* In each case, the price action of the shares subsequent to listing on the American Stock Exchange was favorable in comparison to prior price action on the New York Stock Exchange.

We understand that Fuqua intends to offer to the shareholders of Avis, within thirty days of its purchase of the Avis shares held by the Trustee, a tax-free merger between Avis and Fuqua on a common-for-common basis. The combined company would have pro forma profits before taxes in the range of $60 million, and with an indicated market value of its common equity in the area of $200 million, the vast majority of which would be in the floating supply.

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* 1. Foote Mineral Company (90% of common stock and 48% of convertible preferred stock owned by Newmont Mining Corp.).

2. Martin Processing, Inc. (too few round lot holders).

3. Wang Laboratories, Inc. (created new class of stock with special voting rights).

4. Wesco Financial Corporation (80% of common stock owned by Blue Chip Stamps).

This would qualify it for such generally favorable events as broader institutional interest, listed options, improved research coverage and good market liquidity.

Furthermore, the combined companies would not fall into the "conglomerate" category, as more than half of its profits would be from Avis' business and more than two-thirds of its profits from the transportation business. This represents a far more homogeneous earnings stream than that of such well-known companies as RCA, ITT, and Transamerica.

The combined company would be a well-capitalized, vigorous business entity with substantial access to capital and a broad public market for its common stock. The effects of such combination may be inferred from the records of Avis' two principal competitors, Hertz and National Car Rental.* The sales, net income, and net income as a percentage of sales of Avis, Hertz and National Car Rental for the period 1972-76 are presented in Exhibit B. The table shows that, although Avis' sales gain of 48% during the four-year period from 1972 to 1976 was better than the sales gain recorded by its two largest competitors, its earnings increase of 103% was less than that obtained by either of the other firms. In 1972,

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* Comparable financial data of Budget Rent A Car is not published in the Annual Report of its parent company.

Avis' net profit margin of 2.8% was equal to National's and somewhat better than that of Hertz; although Avis' net margin improved to 3.8% in 1976, Hertz and National had margins of 5.3% and 4.8%, respectively.

The standing of Fuqua's securities in the eyes of the financial community is reflected in the list of prominent investment banking firms who, on March 17, 1977, committed their own capital toward a $60 million underwriting of Fuqua senior subordinated debentures and common stock. This group, headed by Lehman Brothers Incorporated, included as major underwriters:

Bache Halsey Stuart Inc.
Bear, Stearns & Co.
Donaldson, Lufkin & Jenrette
  Securities Corporation
Drexel Burnham & Co. Incorporated
Goldman, Sachs & Co.
Kidder, Peabody & Co. Incorporated
Loeb Rhoades & Co. Inc.
Merrill Lynch, Pierce, Fenner
  & Smith Incorporated
Paine, Webber, Jackson & Curtis
  Incorporated
Reynolds Securities Inc.
The Robinson-Humphrey Company, Inc.
Shearson Hayden Stone Inc.
Smith Barney, Harris Upham & Co.
  Incorporated
Warburg Paribas Becker Inc.
Wertheim & Co., Inc.
White, Weld & Co. Incorporated
Dean Witter & Co. Incorporated

(2) Impact on ITT
as a Shareholder

Fuqua's bid would yield $15.50 net in cash to ITT. Based on the market price of $12-1/8 for Avis common stock on March 25, following the initial announcement of the proposed secondary offering, ITT would realize about $11.20 per share from the sale of its 2 million shares. This assumes a total underwriting and selling "spread" of 6% and an additional $0.20 per share for costs and expenses of the underwriting.* If we base ITT's hypothetical proceeds on the $14 market price of Avis on May 17, immediately prior to the announcement of Fuqua's bid, the net proceeds to ITT would be about $12.96 per share.

ITT would retain 1,743,504 shares following the completion of the proposed underwriting. Let us assume (a) that the next underwriting would be in about 12 months and would have comparable underwriting costs; (b) that the annual dividend of Avis would be increased to $0.60 per share ($0.555 net of taxes to ITT); and (c) that cash is worth 8% (4% net of taxes) per year to ITT. Given the above assumptions and an assumed $14 offering price in 1977, the market price of Avis stock would have to increase to $20 over the 12 months for ITT to realize, through a public offering one year later, the total proceeds of $58 million equivalent to the Fuqua offer. Thus, from the recent price of Avis stock of $14 per share, a price increase of 43% over the next 12 months would be necessary just for ITT to break even. Based on the $12-1/8 price at the time of the announcement, it would have been necessary for the Avis shares to sell at $22-3/8 after 12 months to realize an equivalent result.

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* In the May 27, 1976 offering, the underwriting spread was 7.03% and expenses paid by ITT were approximately $389,000 ($0.311 per share).

(3) Impact on Avis Corporation

According to its latest audited year-end financial statements, Avis had $100 million of debt maturing during 1977. In addition, the present capital structure of Avis, and the reports of the Trustee's financial advisors, suggest that an increased equity base will be required for the further expansion of Avis' business. Since the equity market tends to limit the total amount of dollars that can be raised by a single issuer at any given time, the continuing sale and/or the potential sale of common stock by the Trustee interferes with and reduces the ability of Avis to raise equity capital in the public market. Furthermore, Avis' principal competitors are in the hands of corporations with assets far greater than the assets of Avis. Budget Rent A Car is owned by Transamerica Corporation (total assets $5.2 billion); Hertz is owned by RCA Corporation (total assets $3.8 billion); and National Car Rental is owned by Household Finance Corporation (total assets $3.5 billion). If Avis had access to the capital available to Fuqua for the expansion of the Avis business, then Avis could be a more dynamic company and a more vigorous competitor than by operating on its own. This is underscored by Avis' history wherein they found it necessary to look to ITT for a vital injection of new equity capital as recently as 1975.

The proposed "locked-in" management of Avis, which appears to make it invulnerable to change through either shareholder action or outside take-over, contrasts sharply with the circumstances at Fuqua. Fuqua's history has consisted of a dynamic, performance-oriented management group. In exercising corporate democracy, Fuqua has not shielded its management with such steps as a staggered board and disproportionate voting provisions with respect to outside take-overs.

EXHIBIT A

		Avis Month End Price	Avis E.P.S. (a)	Avis P/E	Industrial Index	E.P.S. (b)	S&P P/E	as % S&P P/E
1975	January	$ 6	$1.11	5.41x	85.63	$ 9.69	8.84x	61%
	February	7-1/4	.64	11.33x	91.16	9.69	9.41x	120%
	March	7	.64	10.94x	93.54	9.69	9.65x	113%
	April	7-3/8	.73	10.10x	98.42	9.17	10.73x	94%
	May	8-5/8	.73	11.82x	102.65	9.17	11.19x	106%
	June	7-7/8	.73	10.79x	106.86	9.17	11.65x	93%
	July	7-1/2	.85	8.82x	99.58	8.61	11.57x	76%
	August	6-3/4	.85	7.94x	97.54	8.61	11.33x	70%
	September	7	.85	8.24x	93.95	8.61	10.91x	76%
	October	7-5/8	.86	8.87x	99.74	8.32	11.99x	74%
	November	7	.86	8.14x	102.19	8.32	12.28x	66%
	December	7-1/4	.86	8.43x	100.88	8.32	12.13x	69%
1976	January	9-1/4	.86	10.76x	113.10	8.55	13.23x	81%
	February	12-1/8	1.45	8.36x	112.02	8.55	13.10x	64%
	March	10-3/4	1.45	7.41x	115.66	8.55	13.53x	55%
	April	9-7/8	1.54	6.41x	114.28	9.35	12.22x	52%
	May	9-1/4	1.54	6.01x	112.68	9.35	12.05x	50%
	June	10-1/8	1.54	6.57x	117.38	9.35	12.55x	52%
	July	10-1/4	1.79	5.73x	115.96	10.02	11.57x	50%
	August	11-5/8	1.79	6.49x	115.18	10.02	11.50x	56%
	September	11-1/4	1.79	6.28x	118.07	10.02	11.78x	53%
	October	10-1/8	1.86	5.44x	115.03	10.31	11.16x	49%
	November	10-5/8	1.86	5.71x	113.77	10.31	11.03x	52%
	December	13-1/8	1.86	7.06x	119.46	10.31	11.59x	61%
1977	January	14	2.11	6.64x	113.28	10.68	10.61x	63%
	February	13-1/2	2.11	6.40x	111.07	10.68	10.40x	62%
	March	12-1/4	2.11	5.81x	109.35	10.68	10.24x	57%
	April	13-1/8	2.37	5.54x	109.00	11.00(c)	9.91x	56%

(a) As reported in S&P Monthly Stock Guide.
(b) For preceding quarter.
(c) Bear, Stearns estimate.

EXHIBIT B

	AVIS(a)			HERTZ(b)			NATIONAL CAR RENTAL(c)		
	Sales (millions)	Net Income (millions)	Net Income as % of Sales	Sales (millions)	Net Income (millions)	Net Income as % of Sales	Sales (millions)	Net Income (d) (millions)	Net Income as % of Sales
1972	$292	$ 8.1	2.8%	$636	$15.4	2.4%	$123	$ 3.5	2.8%
1973	349	11.3	3.2	677	19.3	2.8	140	(15.9)	(loss)
1974	377	5.2	1.4	722	23.2	3.2	146	4.3	2.9
1975	393	10.6	2.7	715	27.4	3.8	155	3.9	2.5
1976	433	16.4	3.8	780	41.4	5.3	174	8.4	4.8
% Change 1972-76	48%	103%		23%	169%		41%	140%	

(a) Source: Avis, Inc. Form S-7, dated May 17, 1977.

(b) Source: RCA Corporation, 1976 Annual Report.

(c) Source: Household Finance Corporation, 1976 Annual Report.

(d) Before unrealized foreign exchange gains or losses; after extraordinary items in 1973 and 1975.

BIOGRAPHY

Name: Gilbert E. Matthews

Age: 47

Education: A.B. Harvard College - 1951.

M.B.A. Columbia University
Graduate School of Business - 1953.

Additional graduate work in finance,
New York University - 1960-62.

Professional Experience: Joined Bear, Stearns in 1960 as a Security Analyst; Member, New York Society of Security Analysts; Chartered Financial Analyst.

Joined Corporate Finance Department in 1967. Became limited partner in 1973; Activities have included extensive work in the areas of mergers and acquisitions, tender offers, opinion letters, preparation and co-authorizing of expert testimony, underwritings of equity and debt securities, private placements and other related corporate finance activities.

Co-authored expert testimony on behalf of Chris-Craft Industries, Inc. valuing securities fo purpose of determining damages in litigation against Bangor Punta Corporation and others. Authored expert testimony on behalf of Internal Revenue Service valuing for tax purposes a corporation sold by defendants.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-------------------- x
ROBERT PRATHER, :
Plaintiff, :
vs. : CIVIL H-77-222
AVIS, INC., Et Al, :
Defendants :
-------------------- x

SIDNEY H. MILLER, :
Plaintiff, :
vs. : CIVIL H-77-226
AVIS, INC., Et Al, :
Defendants :
-------------------- x

UNITED STATES OF AMERICA :
vs. : CIVIL 13,320
INTERNATIONAL TELEPHONE & TELEGRAPH and THE HARTFORD FIRE INSURANCE COMPANY, :
Defendants, :
and
AVIS, INC., :
Defendant-Intervenor :
and :
FUQUA INDUSTRIES, INC., :
Plaintiff-Intervenor :
-------------------- x

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MAY 23, 1977
HARTFORD, CONNECTICUT

BEFORE: HON. M. JOSEPH BLUMENFELD, SENIOR JUDGE.

ORDERS TO SHOW CAUSE

Appearances:

For Plaintiff Prather and Plaintiff-Intervenor Fuqua:

IRVING S. RIBICOFF, ESQ.
Messrs. Ribicoff and Kotkin
799 Main Street
Hartford, Connecticut

MILTON S. GOULD, ESQ.
Messrs. Shea, Gould, Climenko and Casey
330 Madison Avenue
New York, New York 10017

For Plaintiff Miller:

ERIC L. KEISMAN, ESQ.
STEPHEN D. OESTREICH, ESQ.
Messrs. Wolf, Popper, Ross, Wolf & Jones
845 Third Avenue
New York, New York

JONATHAN J. EINHORN, ESQ.
Messrs. Berdon, Young & Einhorn
132 Temple Street
New Haven, Connecticut

HEMLOCK
ERASABLE
COTTON CONTENT

Appearances (Continued):

For Defendant Avis, Inc.:

JOHN TENER, ESQ.
Messrs. Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut

JAY TOPKIS, ESQ.
Messrs. Paul, Weiss, Rifkind, Wharton & Garrison
345 Park Avenue
New York, New York

For Defendant Trustee:

PATRICK H. SULLIVAN, ESQ.
Messrs. Whitman & Ransom
522 Fifth Avenue
New York, New York

F. TIMOTHY McNAMARA, ESQ.
102 Oak Street
Hartford, Connecticut

For Plaintiff United States of America:

MATTHEW E. JAFFE, ESQ.
RUTH DICKER, ESQ.
BETSY WURZBURG, ESQ.
Department of Justice - Antitrust Division
Washington, D.C. 20530

HEMLOCK
ERASABLE
COTTON CONTENT

THE COURT: Mr. McNamara, are you on your feet for some purpose?

MR. McNAMARA: Yes, your Honor.

I would like to introduce to you Mr. Patrick H. Sullivan, who is a member of the New York Bar, admitted to practice before the various federal courts of New York, the Second Circuit, who is a partner in Whitman & Ransom and will represent Mr. Smith this morning, and move his admission for that purpose.

THE COURT: All right.

May I have the name again?

MR. McNAMARA: Patrick H. Sullivan, your Honor.

THE COURT: Patrick H. Sullivan.

MR. RIBICOFF: If your Honor please, I would also like to move the admission for the purposes of these cases of Milton S. Gould, who meets all the requirements under the Connecticut Rules, who will be representing both Fuqua and --

THE COURT: Mr. Gould has been here before.

MR. TENER: May it please the Court.

Your Honor, I would like to introduce to you Jay Topkis of the firm of Paul, Weiss.

THE COURT: I know Mr. Topkis.

May be admitted.

MR. EINHORN: If your Honor please, I'm John Einhorn of the firm of Berdon, Young & Einhorn, and I would like to introduce Mr. Eric Keisman --

THE COURT: You turned your head as you mentioned his name.

MR. EINHORN: Eric Keisman, if your Honor please.

THE COURT: How do you spell it?

MR. EINHORN: K-e-i-s-m-a-n, of the firm of Wolf, Popper, Ross, Wolf & Jones in New York City.

THE COURT: All right.

May be admitted for this case.

MR. EINHORN: Thank you, your Honor.

MR. KEISMAN: Representing the plaintiff Miller, your Honor.

MR. GOULD: Can we proceed, your Honor?

THE COURT: Yours is the first matter, I guess, Mr. Gould.

MR. GOULD: I would think.

THE COURT: Yes.

MR. GOULD: Since I stimulated this, maybe I had better go first.

THE COURT: All right.

MR. GOULD: If the Court please, I'll just take a minute to bring the proceeding into focus.

There are two matters before the Court. The first is in the pending case of United States against ITT. There I represent Fuqua Industries, who seek to intervene in the action to the end that we may apply to the Court for an order amending the Trustee's Order Number 3 to permit the Trustee to act upon and hopefully to accept the Fuqua offer.

We also ask the Court to take the appropriate action to defer the annual meeting until this Court and the Trustee, and whoever else establishes an appropriate interest, can study the Fuqua order.

So that's proceeding number 1 to which I propose to address myself first.

Proceeding number 2 that's before your Honor -- and unless your Honor evinces some indication that we separate them for purposes of argument, I would propose to intermingle them. I don't want to waste the Court's time.

THE COURT: There is a certain overlap.

MR. GOULD: Yes, your Honor.

THE COURT: I don't mind allowing you to proceed on the several points while you're on your feet. But I would prefer not to have too much intermingling as we go along. See if we can't concentrate on issue by issue separately.

MR. GOULD: Yes, I intend to do that, your Honor.

THE COURT: All right.

MR. GOULD: I want to make it as simple and as prompt as possible. That's why I'm doing that, rather than dealing with formalities.

THE COURT: All right.

MR. GOULD: The second action, of course, is the action brought by Mr. Prather, who is an official of Fuqua, but he brings it in his capacity as an Avis stockholder. He alleges false and misleading statements in the proxy material and he, on application of different law, seeks to enjoin the annual meeting until the alleged misrepresentations, omissions, misleading statements have been corrected.

I'm conscious, as I speak, that there has already been an effort made to affect such corrections, and we'll address ourselves to those at the appropriate moment.

The Fuqua offer, which lies at the heart of this entire matter and which is responsible for bringing all these people, I suppose, before you in

Hartford today, is that we propose to pay to the Trustee $15.50 in cash for each share of the 47 percent of the Avis shares which the Trustee holds.

As far as the public is concerned, our proposal is that they would not get cash now. If we, Fuqua, should purchase the Trustee's shares we undertake as our representation to the Court to offer to the public shareholders of Avis a tax-free exchange of securities in at least an equivalent amount of money.

THE COURT: May I ask a question here?

MR. GOULD: Of course, your Honor.

THE COURT: How do you propose to make that tax free?

MR. GOULD: Well, we will give them stock and we will do it in a tax-free exchange.

THE COURT: What provision of the Code do you rely upon to make it tax free?

MR. GOULD: Well, your Honor, I can't quote you verse and chapter. I'm advised by the tax people that it can be effected on a tax-free basis.

THE COURT: Well, I'm presently involved in a big lawsuit in which ITT --

MR. GOULD: I know of it, your Honor.

THE COURT: -- was held not to be making a tax-free offer because they had not divested themselves of shares previously acquired for cash.

MR. GOULD: Fortunately, we don't have that disability, your Honor. We don't have any Avis stock.

THE COURT: Well, you propose to buy Avis stock for cash.

MR. GOULD: Yes sir.

THE COURT: And then you say after you've bought it for cash you're going to provide a tax-free exchange for these shareholders?

MR. GOULD: Well, your Honor, I'm advised by the experts that it can be done under a doctrine which I'm told is called continuity of interest, the ownership of 50 percent, and my attention is directed to the regulations of the IRS, Section 1.368-1(b). We would have to satisfy your Honor that we have the capacity to do it.

THE COURT: Not me.

MR. GOULD: We would have to satisfy your Honor that we have the concurrence --

THE COURT: I tried to get that case, but they wouldn't bring it here. I wanted that.

MR. GOULD: Your Honor, I'm mindful of the strictures.

We would have to satisfy first the Internal Revenue Service, and before we could implement this transaction we would have to satisfy a lot of people that it's tax free.

THE COURT: I bring it up, perhaps mistakenly, because it has, I suppose, some bearing upon the extent of the disclosure of your own offer.

MR. GOULD: Of course, your Honor. I'm not oblivious to what happened in the ITT case.

THE COURT: Okay.

MR. GOULD: As your Honor knows, I was a peripheral participant in it, and I know the problem that arose there, and I'm advised authoritatively that I need not deal with it. And that explains why I didn't come prepared to argue the tax free aspects of it. Your Honor got me off balance.

THE COURT: All right.

I don't think you will have trouble getting back on the track. Will you?

MR. GOULD: Well, I'll try. I'll do my best.

THE COURT: All right.

MR. GOULD: Now, what we propose to do is to make that proposal. I don't intend to spend very much time discoursing to your Honor on the quality of the Fuqua securities that would be involved.

I do have people from the investment banking community present and if your Honor should indicate an interest in going into that subject we are prepared to deal with it.

I would like, at the outside, to apologize to all concerned for the atmosphere of exigency which has been created by our application to the Court. I assure the Court that that resulted from no fault on our part.

We have been looking at the Avis situation for a considerable period of time - at least seven or eight months. There were reasons on our side why no action was taken prior to this. But we were forced into action by learning from the Wall Street Journal on May 12th of the proposals which were being presented by the Avis management to its stockholders. Proposals which if they were adopted by the stockholders would undoubtedly have the effect of scaring us off, and probably anybody else who would be interested in acquiring Avis.

I'll address myself to that in a few moments, but I want to explain why we had to move so quickly.

THE COURT: Do you think scaring you off has caused the recent increase in the public price of Avis shares?

MR. GOULD: I don't think there is any question, your Honor, that our appearance on the scene and our appearance --

THE COURT: Has brought up the price?

MR. GOULD: --giving the price has had the almost automatic reaction of creating an arbitrage situation, which probably lifted the price of the stock.

I don't like to pretend to be an expert --

THE COURT: You don't think it's because of the proposal put forth before the Directors that would make it a little more difficult to effect a merger that has brought the price up?

MR. GOULD: No, I don't think so, your Honor.

THE COURT: I see.

MR. GOULD: I don't think so at all.

And if that were to become an issue, I would be prepared to deal with it on a professional basis; which means that I wouldn't try to substitute my judgment as a lawyer for what really is a judgment for experts with an investment banking background.

THE COURT: All right. That sounds like good judgment on your part.

MR. GOULD: I wouldn't try to improvise.

THE COURT: Okay.

MR. GOULD: My own reaction, which is not an expert one, is that the increase in price in the last week or so is the result of somebody coming forward and saying, "I'm ready to pay 15½ dollars". That's just a guess on my part. I'm not an expert.

THE COURT: All right.

MR. GOULD: Now, your Honor will recall, of course, that in the December 15th report to the Trustee from Mr. Troub the suggestion was made -- more than a suggestion; I think there was a very vigorous affirmative position that the Trustee should examine all efforts to purchase on their merits.

And, frankly, that's all that we are asking here is that our proposal do be examined on its merits. So far the Trustee, as understandably, I suppose, refused even to consider the Fuqua proposal.

Now, there have been some indications that perhaps what Mr. Fuqua's company should have done here, what Fuqua Industries should have done was to try to make a tender offer, a public tender offer.

I think that would have created even more confusion and more difficulty than the proposal we have made now.

I don't feel that we're in any state which requires some of the pejoratives that have been applied to us just because we made this proposal.

Now if we want to discuss the impact of this offer on the economics of Avis, again I would suggest to your Honor that that should be done by experts and not by lawyers who can only parrot what they say.

The proposals with which I'm sure your Honor is at least as familiar as I am which have triggered this action on our part are the proposals first - that's proposal number 2 in the proxy statement - for a staggered Board of Directors. Quite frankly, if that's adopted anybody who wants to come into the Avis situation with a control position would have to wait two bears before - at least two years; two annual meetings - before he could elect a majority of the Board. So that's offensive to us if we're going to do it.

Next, proposal number 3, which would require the affirmative vote of 80 percent of the shareholders for any merger which had not in advance been approved by two-thirds of the Directors.

Now, I don't think anybody has any illusions about the purpose of these proposals to be presented to the stockholders.

THE COURT: Well, I think they are explicated in the notice.

MR. GOULD: I think so, too. I think Paragraph 6 of the proxy statement --

THE COURT: Explain why they did it or why they propose it.

MR. GOULD: That's correct.

THE COURT: Right.

MR. GOULD: It's no different from the reasons why other people have resorted to these things. It's to keep anybody from coming in.

And whether that's a wise thing or an unwise thing is not for me to say. Reams have been written on this subject.

THE COURT: Well, no legislature has said it's improper or illegal.

MR. GOULD: On the contrary, some legislatures have made it possible to do this.

THE COURT: Yes.

MR. GOULD: And some companies and some lawyers have thought it appropriate to do it.

Whether in the peculiar circumstances of the Avis situation it is wise or appropriate is perhaps, in the end, for the courts to decide. There's no purpose in my expressing opinions about it.

I'm frank to admit to your Honor that in companies in which I have either a direct professional or proprietary interest, in some instances we've rejected it, in at least one other that I know of we have done the same thing. But I think the circumstances were different.

THE COURT: Okay.

MR. GOULD: That's all I can say about it.

THE COURT: A matter of judgment.

MR. GOULD: I don't think that there is any deep moral problem involved in this.

THE COURT: No. I think the Supreme Court has recently said that in Santa Fe, didn't they? They said if the law permits it, it's all right.

MR. GOULD: I think that was a little different. But I really don't want to take your Honor's time to argue it.

THE COURT: Okay.

MR. GOULD: Because I think it has to be judged on its application to the facts in this case.

This case is, of course, a sport. It's different from the ones where a board of directors, a normal board of directors running a completely normal company, not under a divestiture decree, undertakes to protect itself by these devices. I think those are very substantial differences.

There may be other cases in which a company under divestiture order has done this. I have never heard of them and I doubt very much if there are such cases.

THE COURT: Well, it's appropriate that the case should be in this court because we specialize in cases of first impression. And that's what we have here, right?

MR. GOULD: Well, you have a case of first impression, --

THE COURT: Which you call a sport.

MR. GOULD: -- but I'd be ready to call your Honor as to whether it's this court or some other court that specializes in cases of first impression, because within the last few weeks --

THE COURT: We'll match our record against anybody.

MR. GOULD: I mean you're holding your own pretty good up here.

THE COURT: Well, go ahead.

MR. GOULD: Now, the investment bankers whom we have consulted with respect to this have made a comparative analysis as between the invocation of these protective devices in this case and those in other cases. They are here, and if your Honor wants to get into that subject we can do it.

I think it will serve my immediate purpose at best if I simply tell you, tell your Honor, that --

THE COURT: They're on your side, those you have brought.

MR. GOULD: I would expect the experts that we hire to be on our side, just as I expect the experts that are hired by Avis to be on their side. I mean this is a fact of life about experts, your Honor.

They do characterize it as extraordinary, and I think there is an evidentiary basis for their conclusion. Plainly if the Directors are not able to exercise a veto over a shareholders decision to sell to Fuqua, should that contingency come to pass, that is a substantive matter to be considered.

The Directors may have a view here that the Avis stock will appreciate substantially in the next few years. I suggest, your Honor, that a shareholder may or may not wish to accept the Fuqua offer. I think the most that I can urge on the Court is that the individual shareholder, other than the shares represented by the Trustee, should have the right to examine the matter and to make a decision.

Now, I do not propose, unless your Honor feels that it is appropriate, to argue at great length the technical question of our right to intervene.

THE COURT: That's the whole question, isn't it?

MR. GOULD: Except that the law on it is very limited. The right to intervene is affected somewhat by the peculiar position taken by the Department of Justice.

I don't know whether your Honor has seen the exposition of their position which has been given to me this morning. As I understand their position --

THE COURT: Well, you're one up on me, I guess.

MR. GOULD: I anticipated that, your Honor, that on this point it had not been given to you. Because I would have expected if it has -- Perhaps it should be handed up.

THE COURT: Wait a minute. I may have it here.

Well, briefly, are they on your side or not?

MR. GOULD: I don't know, your Honor. I

don't know whose side they're on. They can speak for themselves; they are here.

THE COURT: Do they oppose intervention?

MR. GOULD: What they say in there is they oppose intervention.

THE COURT: All right.

MR. GOULD: But - But they urge that we be heard in the capacity of amicus curiae. That kind of mystifies me.

In conversations with them - and they were the friendliest possible conversations - in an effort to clarify their attitude I am told that the Department of Justice has taken a traditional attitude to oppose interventions in these enforcement cases of theirs.

Now, I would have expected - I did, indeed, anticipate that in pursuance of that traditional attitude they would have come in here and said no, do not hear Fuqua on its application to intervene.

Instead of that, they say you can hear them, please do hear them. Indeed, I read what they say as an affirmative suggestion to the Court that we should be heard, but hear them in their capacity as amicus curiae rather than as intervenors.

Now, I think in fairness to the Justice

Department position I should explain who I understand what they're saying.

I think that at the nub of their position is that they want divestiture to take place, complete divestiture to take place as promptly as possible. I gather that they are not entirely happy with the program of piecemeal divestiture to the public, which is the present program of the Trustee. And if I read them correctly here, they say do it and get it over with.

Well, sir, if indeed that is their attitude, then they are on my side, because what I am proposing is that it get done and get done as quickly as possible.

We contend to your Honor that notwithstanding the attitude expressed by the Justice Department we do have a right to intervene under Rule 24. We think we have a right to intervene, that is, the intervention as of right delineated by the Rule. We base that on the fact that we do have an interest in the property or in the transaction that is the subject of the action, which is the Trustee's shares and their divestiture.

THE COURT: You have an interest in buying them.

BRAGALE

MR. GOULD: In buying them.

THE COURT: You're a customer.

MR. GOULD: And a good one. And a good customer.

THE COURT: That's another question.

But, at any rate, the theory is that you're a customer for the shares, they give you an interest.

MR. GOULD: And that's an interest contemplated by the Rule.

THE COURT: Okay.

MR. GOULD: The second aspect of any test for intervention is that we are so situated that a disposition of the matter absent an intervention would, as a practical matter, certainly impede our ability, maybe even frustrate our ability to protect that interest.

In other words, if we are not permitted to intervene --

THE COURT: You're not prepared to try harder. Is that it?

MR. GOULD: Well, try harder in the courts, your Honor, but maybe not try harder in the public arena.

But certainly it looks as if we would not be able to try any harder; as if the impediments and the frustrations would defeat any effort on our part, however motivated we might be.

Obviously a successful intervention on our part will require some substantial modification of Trustee Order Number 3; some amendment to it. That's the order in which your Honor directs and authorizes the Trustee to go forward with these serial sales. And elemantary what we're doing is challenging the wisdom of that in the face of the Fuqua order.

The third test for intervention as of right, which we understand is provided for in the Rule, is whether our rights are adequately represented by any of the existing parties.

Well, I suppose I might have walked into this courtroom this morning hoping that the United States Government would have protected that right. But in view of shall I call it the equivocal attitude they take, which is don't let them intervene but hear them anyway, I think we have met that third test.

So on those three principles we urge on the Court that we have the right to intervene in this case.

Of course, as an alternative matter, this Court can allow us a permissive intervention under (b)(2) of Rule 24 where the applicant's claim and let's say the thrust, the gravamen of the main action, comes in questions of law or fact in common.

I think we meet that test, as well, because we do have questions of law and fact in common. All that we're talking about is simply the divestiture of ITT's holdings of Avis' common stock.

So that the common question, characterize it as you will, as one of law or of fact, is the manner, the technique, the process by which the trust property should be divested, disposed of in a manner which is most beneficial to all the parties.

Now here again I would have expected, under normal circumstances, to be supported in our position by ITT. Because if the effect of the Fuqua offer to buy at $15.50 -- if the effect is to get more dollars for ITT than any alternative technique, I would expect that they would be standing here beside me saying, "Get more dollars".

I have heard no expression of attitude from ITT, unless somebody comes forward this morning. While we have talked with them, they have not communicated any point of view to us.

Your Honor will recall that the Trustee is acting under Order Number 3 which was made on January

14, 1976. He is, under that order, directed to begin the disposition of the trust property by this series of public offerings - the first having been done. One is in process now.

Plainly I'm not in a position, unless your Honor rules on our right to intervene or invests our standing here as amicus curiae. If we're to adopt the Government's attitude with some kind of mystical qualities, which I've never heard about before - unless that happens I can't ask for the relief I really need.

The relief I really need in this case is that as promptly as possible we can address ourselves to your Honor on the wisdom of maintaining this Order Number 3 in its present form. And it is for that reason that we joined with our application for intervention an application to the Court to enjoin the holding of the annual meeting of the stockholders until such time as an appropriate motion to amend can be made and can be acted on in this Court.

In other words, we say don't do anything irreparable until the Court can give full and appropriate consideration to the wisdom, the propriety of what it is we are trying to do.

We would, of course, if we are permitted to do so by --

THE COURT: As I understand it this situation presented by your client, Fuqua, sort of underscores the seriousness of the proposal to amend the By-laws.

MR. GOULD: Yes sir.

THE COURT: That's what it does, right?

MR. GOULD: It underscores it.

And, of course, if the amendments are made we are frustrated because now who's going to woo amarried woman.

THE COURT: This is an example of how the proposed by-law would work.

MR. GOULD: That's right.

THE COURT: Right?

MR. GOULD: That's exactly right.

THE COURT: Okay.

For that purpose I'm glad to hear you make an exposition of Fuqua's position.

MR. GOULD: Now let me point something out, your Honor --

THE COURT: And that, I think, you have done.

MR. GOULD: Let me just point one other thing out.

We are completely conscious of the fact that if these steps - the staggered board, the 80 percent, you know, all the lock-in stuff - if those should be adopted nobody is going to woo this company. We know that.

On the other hand, we're completely conscious that if this Court should hold that up and say, "Now let's see if maybe the Fuqua offer shouldn't get very careful consideration, see if it isn't a good thing for everybody", we may find ourselves tomorrow with competitors standing in precisely the position that Fuqua is in today.

But then it may become an auction. Then it may, as we have seen in this case in California recently where competing groups came in, then we may find ourselves simply competing with Company A or Company B. My understanding of the situation is that there have been other people who have approached the Trustee, as indeed we approach the Trustee.

Let me say with careful restraint everybody has been discouraged.

THE COURT: All right.

MR. GOULD: But if your Honor holds up this meeting we may find ourselves in this position and the $15.50 may be much less than is realized.

THE COURT: All right.

MR. GOULD: Now I think I've told your Honor enough about the Fuqua position on the first case.

Now with respect to the other matter, the proxy statement thing, there we have a somewhat different situation and I address myself to it.

I am told this morning that there are people representing stockholders who wish to intervene in this case, and maybe they will be more scholarly or more persuasive than I can be. But let me explain to the Court where we stand.

I don't have to quote cases like TSC Industries and the other cases which have become the classical ones in this Section 14 situation. The original proxy statement which was mailed --

THE COURT: Now you are on the Prather case, I take it.

MR. GOULD: Yes sir. I assume your Honor has heard enough.

THE COURT: You're right.

MR. GOULD: I would simply be repeating myself. Your Honor understands the Fuqua proposal.

Now we are on a completely different tack, and one which might be just as appropriate were there no Fuqua proposal; and that is the adequacy or inadequacy of the proxy statement.

I think the classical language which I adapt from the TSC case is that "... An omitted fact in a proxy statement is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote".

I think that's the litmus paper we apply to this kind of a case. Of course, the cases are as long as your arm.

On May 16th there was a registration statement filed offering two million shares of common. Obviously, the selling shareholder is the Trustee.

HEMLOCK

The effect of such a sale would be to reduce from 47 percent to 22 percent the percentage of Avis stock held by the Trustee.

The proxy statement mailed a few days earlier does not disclose the proposed secondary offering or its intended registration. The proxy statement is dated May 4th.

I cannot imagine, just as a matter of many decades of experience in dealing with things like this, that the people who promulgated the proxy statement didn't know about the registration statement when it was done.

I would have to say that that represents a willful, deliberate attempt on the part of somebody to withhold that from the stockholders who were being solicited.

THE COURT: All right.

Now, one omission is the --

MR. GOULD: Failure to refer to the registration statement.

THE COURT: Yes.

MR. GOULD: I think it is obviously material, and I hesitate to take the time of the Court to argue the question of materiality on that omission.

THE COURT: All right.

MR. GOULD: Next, the proxy statement contains the statement at Page 6 that, "Neither the Company nor the Trustee is aware of any pending or proposed transaction that would be affected by the proposed amendments".

Well, sir, I urge that that's a misstatement because they knew then about the proposed offering.

THE COURT: When?

MR. GOULD: Well, they knew it certainly on May 4th.

Now if your Honor could make a finding of fact that when they issued this on May 4th they didn't know about the registration statement, it would be one of the most astonishing statements I ever heard of.

THE COURT: I'm sorry, I must have misunderstood.

I thought you were speaking of their awareness of an offer. You're speaking of their awareness of --

MR. GOULD: Of the registration statement.

THE COURT: All right.

MR. GOULD: I cannot say to them, sir, that on May 4th they knew of the Fuqua offer because I'm quick to explain to your Honor that we didn't move until the proxy statement came out, stimulated by the lock-in provisions in the proxy statement.

THE COURT: All right.

MR. GOULD: But I think that it's clear that now that the Fuqua offer is in the open --

THE COURT: Well, that's another thing. I didn't want to get you off the track.

MR. GOULD: I've concluded on the subject of the registration statement.

THE COURT: All right.

And the second then is?

MR. GOULD: The second is I will concede that on May 4th they didn't know of the Fuqua offer. I urge on the Court, though, that once they knew about it it is a matter of sufficient materiality, of sufficient importance so that the proxy statement must be updated in order to inform Avis stockholders of the Fuqua offer, and that the failure to do so would be false and misleading within the meaning of the cases.

Another omission from the original proxy statement is that the compensation which has been received by the Trustee is not referred to at all there. The amount of such compensation, I urge on the Court, is material so that a stockholder being asked to vote for at least the temporary lock-in provided for can evaluate the Trustee's interest in proposing it and the interests of the Directors in discouraging offers by third parties like Fuqua.

THE COURT: You understand the situation. Mr. Gould, the compensation which the Trustee receives qua Trustee does not come from this corporation; it comes from the beneficiary.

MR. GOULD: Yes, I understand, your Honor.

THE COURT: It comes from ITT.

MR. GOULD: I cannot take the usual tack here and say --

THE COURT: Well, it's not the usual situation.

MR. GOULD: Because it's a very unusual situation.

On the other hand, the fact that the Trustee is getting compensation affects his interest or disinterest, as the case may be.

THE COURT: Well, that's another question.

MR. GOULD: Well, that's the only point I can make about it.

THE COURT: All right. As long as the distinction is clear.

MR. GOULD: Yes, I understand it very well, your Honor.

THE COURT: Very well.

MR. GOULD: Similarly, I understand that the Whitman & Ransom fees, which are not disclosed in the original proxy statement, are also paid by ITT. Nevertheless, the fact that they are being paid in a situation like this, which the stockholder is being asked to perpetuate, is a matter which goes to their interest or disinterest. It affects objectivity that somebody is getting paid.

Now I don't mean that invidiously. Mr. Smith and Whitman & Ransom I'm sure are people of the finest quality or they wouldn't be here doing what they are doing.

On the other hand, a stockholder being asked to perpetuate a system under which they are being compensated is entitled to know they are being compensated and to what extent.

So I suggest to the Court that those two omissions - Trustee's compensation, Whitman & Ransom's compensation - is material; the omission is a material omission.

Similarly there is no statement in the proxy statement, there is no disclosure that the Trustee as the holder of 47 percent of the common stock effectively controls the Board of Directors.

Now when I use a term like "effectively controlling it" I'm not making it up. I'm parroting the jargon which has been in the mouths of the Securities and Exchange Commission for several generations of lawyers now.

There is no doubt that by all the standards, all the criteria that we use when we employ a phrase like that, the Trustee is in effective control.

THE COURT: Doesn't the statement say that by reason of the ownership of that stock he may be deemed --

MR. GOULD: He may be deemed.

THE COURT: -- to be in control.

MR. GOULD: That's a little different from saying he is in control, your Honor.

I don't know that that would get me by.

THE COURT: All right.

MR. GOULD: There is a difference.

THE COURT: That's another point.

MR. GOULD: There is a distinction. And your Honor, I'm sure, is mindful that the outcome of attacks on proxy statements have been controlled by distinctions a little less subtle than this.

Now I think it's necessary that that be in there.

The proxy statement contains this interesting language. It says that these proposals, the lock-in proposals, "...could deter a change in the management or control of the Company that would be advantageous to the Company and its stockholders".

I respectfully suggest to the Court that

that's an interesting understatement. I think that the fact is that there can't be any changes in management, particularly a change like the one contemplated by the Fuqua proposal in the face of proposals like that and that, therefore, that is not adequately presented.

THE COURT: What do you mean"contemplated by Fuqua"?

MR. GOULD: I beg your pardon?

THE COURT: Fuqua contemplates a clean sweep, is that it?

MR. GOULD: Yes sir. And so would anyone else coming in here in the position, you know, as the outsider coming in.

So to say to a stockholder that they could deter a change I think is, let's call it, an understatement which could be material.

They do prevent a change. They're a dam, they're a block. That's what they are there for. They are not there to slow down a process; they are there to prevent a process.

Now that's not just semantics, that's not just words. There isn't going to be any change as long as they've got these proposals.

What I'm trying to do is simply to enumerate for your Honor what we found that was wrong in the proxy statement.

THE COURT: Well, you say that's wrong because you don't like it.

MR. GOULD: No, it's more than taste, your Honor.

THE COURT: Well, he has certainly explained fully what the purpose of the changes in the By-laws are, and that's the same purpose that you complain of.

MR. GOULD: No, your Honor.

THE COURT: That this could deter a takeover or merger.

MR. GOULD: Perhaps I haven't made myself clear.

It's one thing to say to stockholders that there's a paper wall or a one-foot ditch in front of a takeover.

THE COURT: You complain because he didn't say that this will absolutely prevent anybody from buying that stock?

MR. GOULD: That's right.

This is a mine field, this is a barbed-wire fence.

THE COURT: All right.

MR. GOULD: And there's all the difference in the world between something that, to use his language, "could deter a change" and something that is designed to keep everybody out. There is a difference - and I think I don't have to ague it any more.

That's a very careful lawyer's understatement of what the truth is.

The proxy statement goes on. It says that with respect to the proposals, "... that tender offers or other acquisitions of stock for the purpose of acquiring control of the Board of Directors could be discouraged". Could be discouraged. They are completely cut off. There's no way there's going to be any tender offers if they do this.

The same observations I make with respect to the earlier, "could deter a change", are applicable to this. I just think it's a strange way of telling the truth.

Now with respect to proposal number 3 in the notice, the proxy statement states: "... that the effect of the proposed amendments described above could be to discourage a tender offer or takeover bid", and so on.

Again that's a strange way saying we're locking them out.

It is true, your Honor, it ould be; the effect could be to discourage. Th ffect really is to prevent. And that, I suggest is not the purpose of proxy statements. The pose of proxy statements is to tell the truth as early and unequivocally as you can. And any viation from that, with all respect, is false a misleading within the language of the cases.

THE COURT: All right.

MR. GOULD: I think on the howing we would be entitled to preliminary injunct relief.

Now I understand, your Hon that since we have applied to the court and made r motion there has been a supplemental mailing. that supplemental mailing to stockholders the is a reference to the compensation of the Trustee reference to the compensation of Whitman & Ran there are some other attempts to effect substant emendations which would cure the defects of original proxy statement.

I have made an effort, yo Honor, to find out whether that supplemental mai really has any substantive effect. I am adv that it was not in the hands of any of the brokers until this morning; that it got into their hands because it was hand delivered by the transfer agent of the company.

It will take at least six or seven days before the brokers can get appropriate instructions from the beneficial owners of the stock. So that I don't think that this is an effective way of curing what I urge on the Court, an effective way of curing a defective proxy statement.

Now, your Honor said something to me before about a clean sweep, and I answered you perhaps with a degree of glibness that I did not intend.

Nobody contemplates a clean sweep of management. We have never suggested that. We have no intention at all, should we succeed in this project, to sweep the management. We do intend to clean sweep of the Board of Directors; in other words, we would substitute a different kind of thing.

Now, I think I've said enough to your Honor. I've made clear our position on both things.

THE COURT: I think so.

MR. GOULD: Let me conclude simply by pointing something out.

I do not understand the position of the United States Government in this case. If indeed their position is that they want divestiture, just as quickly as possible then the Fuqua proposal dovetails with their point of view. I will be very happy if they will expose that point of view to your Honor in an appearance here today. I think that's the first important thing.

Most important, central to a consideration of this is that the Avis stockholder, the stockholder other than the one represented by the Trustee, has got a right to see this company return to some kind of normalcy. Normalcy does not mean operation by court-appointed officers.

As your Honor knows, I have myself functioned in that capacity several times - maybe even many times. It is not a normal statute, a normal posture for a publicly-owned company to be in. And one would think that everybody would bend his efforts to seek a return to normalcy.

Now a return to normalcy can only be effected in the peculiar circumstances of this case by treating an offer such as the offer made by Fuqua with care, with reverence, with respect.

THE COURT: All right.

MR. GOULD: It should be carefully considered, and it cannot be considered on a proxy statement dated May 4th which is admittedly inadequate and requires correction for a meeting next Wednesday.

It can't be done that way. It requires a little more attention from this Court and from everybody else.

THE COURT: All right.

MR. KEISMAN: Does your Honor wish to hear the remaining plaintiff at this time who stands in the same position on the merits seeking injunctive relief?

THE COURT: You want to endorse what Mr. Gould has said about the position of the shareholders?

MR. KEISMAN: Your Honor, there are a few things I think need to be added - just a few - that I think are germane.

THE COURT: You've got a separate lawsuit?

MR. KEISMAN: Yes sir. We filed the Miller case and your Honor signed an order to show cause for preliminary injunction on Friday.

I'm Eric Keisman of the firm of Wolf, Popper, Ross, Wolf & Jones in New York, attorneys for Dr. Miller, who is the owner since 1974 of a thousand shares of Avis. And, your Honor, we do not intend to belabor or repeat the things that Mr. Gould has said. What he has said about the proxy we endorse.

We would like to add something to it. We think the proxy is still misleading, even if the supplementary proxy had been received, even if there was any chance in the world that small stockholders, quite apart from New York brokers, all over the country have had a chance to read, digest and advise their advisors about what to do with it.

As your Honor is now aware, the original proxy statement doesn't mention not only the registration statement, but doesn't because it can't represent the possible pendancy of any merger or offer for the securities of Avis.

THE COURT: All right.

MR. KEISMAN: The supplemental doesn't either, your Honor. The supplemental proxy --

THE COURT: Now just a minute, Mr. Keisman. You were going to suggest to the Court that there were other omissions --

MR. KEISMAN: Yes, your Honor.

THE COURT: -- than those Mr. Gould talked about.

MR. KEISMAN: I'm discussing now the supplemental proxy, your Honor.

The supplemental proxy doesn't say, your Honor, that Fuqua had already informed Avis --

THE COURT: You're talking about the omission of information about a possible offer from Fuqua?

MR. KEISMAN: Your Honor, not a possible offer.

THE COURT: Well, the offer as outlined here?

MR. KEISMAN: No, your Honor.

On May 16th Fuqua informed Avis that if Proposals 2 and 3 passed, the Fuqua offer would be withdrawn. That is our information.

THE COURT: I see.

MR. KEISMAN: The supplemental proxy dated May 19th --

THE COURT: Now just a minute.

You complain that there was an omission in failing to state that the Fuqua offer had been rejected, or what?

MR. KEISMAN: No, your Honor.

THE COURT: I don't understand you.

MR. KEISMAN: That the Fuqua offer will be withdrawn if Proposals 2 and 3 pass, if the stockholder meeting is held.

THE COURT: I see. All right.

MR. KEISMAN: We think that the small stockholder is entitled to have it perfectly clear that Avis management, the Avis Trustee, now know that if they pass 2 and 3 the Fuqua offer is gone.

And Mr. Gould correctly couldn't speak to the interests of the outside public stockholder. We think that the outside public stockholder needs and deserves and is entitled to a clearer revelation that if you don't quickly send a telegram revoking your proxy the Fuqua offer is dead, your chance to get the equivalent of $15.50 tax free is dead.

THE COURT: All right. That's the omission that you --

MR. KEISMAN: We think it is a serious omission.

We also suggest that your Honor cannot consider the supplemental proxy as having been effectively disseminated to the public stockholder body. The Federal Rules even presume three days for mailing.

Even if it was mailed First Class to the world on the 19th, there has been no time for the stockholder body to receive it and write back and react to it.

We respectfully submit it cannot be allowed to validate the proposed meeting or any vote at the proposed meeting.

We also suggest that the proxy is still misleading even as supplemented in that it does not tell the public stockholder what the relationship is between the proposed secondary which has been registered but which is not, as we understand it, effective and Proposals 2 and 3.

We respectfully suggest, your Honor, that if Proposals 2 and 3 don't pass, if the block is not effected, that there is strong reason to believe that the secondary won't go forward.

We also further respectfully suggest that the proxy fails to reveal, because it doesn't deal with it at all, the supplemental proxy doesn't deal with it at all, the probable effect of a present secondary and a later relative dribble out secondary, and perhaps still a third upon the market for Avis stock as it compares to the value offered by the Fuqua offer.

Now, Mr. Gould has not taken it upon himself, and I can't either, to discuss the economic merits of the Fuqua offer except as a lawyer might understand them.

But, your Honor, we do think that if your Honor is at all in doubt that testimony should be heard or called for, not only as to whether or not this is valud under 368(b) —

THE COURT: Now wait a minute.

You're complaining or you're arguing that there is not a sufficient notice to shareholders of the Trustee's present intention to divest his holdings in a series of offerings?

MR. KEISMAN: No, your Honor, we're not saying that there isn't notice that a series of offerings is intended.

We're saying once the Avis Trustee knows of a potential other offer, that the stockholders of Avis are entitled, prior to making a decision, whether they shall vote for 2 and 3 and therefore block tender offers, merger offers, or what have you; or whether they shall vote against it and hear such offers; that they're entitled to have all the facts on which they might make a judgment as to which way out is best.

THE COURT: I see. All right.

MR. KEISMAN: And certainly since May 16th they've been entitled to that information. They certainly didn't get it from the supplemental proxy.

THE COURT: You mean not only are they entitled to know what the Trustee proposes to do with respect to divestiture, but he should support that by a brief containing opinions of reputable authority?

MR. KEISMAN: Not necessarily a brief, your Honor. But once the Trustee knew that, for example, Fuqua was a bidder, then as one sees generally in merger proxies perhaps the stockholder from May 16th forward was entitled to some serious information about Fuqua from the Avis Trustee before the Avis stockholder was required to make a decision.

And, your Honor, this is all the more reason why the meeting scheduled for the 25th should not be allowed to effectuate the proposed By-law changes.

We, of course, have argued in our papers that the meeting should not be allowed to take place. Whether or not your Honor is willing to go that far because of these proxy violations - and we think there is good ground to believe that one should - a secondary form of relief which could achieve the same result would be for your Honor to enjoin the filing and consummation of any ballots cast or the consummation of any changes in the by-law purported to be made by such votes until your Honor could determine the merits.

THE COURT: All right.

MR. KEISMAN: And, your Honor, we suggest there is irreparable harm here to the public stockholders.

Now, again, Mr. Gould has addressed himself to the reasons why --

THE COURT: You mean because you won't get a tax-free offer?

MR. KEISMAN: That could be a substantial problem, your Honor, substantial irreparable harm in terms of today's present capital gains rate and in terms of the present holding period.

THE COURT: Have you looked into --

MR. KEISMAN: I'm not a tax expert, your Honor, but I know that tax-free exchanges often have advantages. I know that as a lawyer.

THE COURT: Apart from the price there's another problem. Okay.

MR. KEISMAN: And there is also irreparable harm in that this will now finally determine the way the rest of the Avis stock becomes public stock, will finally determine that in fact the float should be increased by 30 or 40 percent now, and by another 20 or 30 percent soon.

It will finally determine that the market should continue to be overhung by even a shrunken control block, it will finally determine a lot of things that affect open market purchasers and present holders of Avis. Unless your Honor grants some relief --

THE COURT: Just one question.

How long has your client held his stock?

MR. KEISMAN: Since 1974, your Honor.

THE COURT: 1974?

MR. KEISMAN: Yes, your Honor. I don't have the date.

THE COURT: Well, the float was there overhanging the market when he bought, I guess.

MR. KEISMAN: Yes, your Honor. But the Fuqua offer is one way where he might get the advantage and the public stockholder body might get the advantage of a relatively non-float affected offer, an offer desiring all the stock.

If another two million shares come out in June and there are another 1.7 million waiting sometime, that could have a substantial effect, could have a substantial effect on market price.

All we're saying, your Honor, is that there is a fiduciary duty on the part of the Trustee, the court-appointed Trustee, to give serious consideration to the best interests. Because he holds a control block. Serious consideration.

THE COURT: Now this is a fiduciary duty that arises out of the fact --

MR. KEISMAN: Of control.

THE COURT: -- that he's a majority shareholder.

MR. KEISMAN: Of control, your Honor. Give serious consideration while he's finding his own best way out under this Court's orders to protecting the interests of the large public float.

There is such a duty, your Honor. And the determination to go ahead with the secondary --

THE COURT: Let me ask you a question.

MR. KEISMAN: Yes, your Honor.

THE COURT: A control should call for a premium, shouldn't it?

MR. KEISMAN: It often does, your Honor,

yes.

THE COURT: Well, would you suggest what the premium would be if he takes $15.50 - how much of that is premium?

MR. KEISMAN: Your Honor, I have no way of knowing. But the offer presently before us, as I understand it, Fuqua says "an offer of no less value". It doesn't --

THE COURT: Your position would be that if you got less that would measure the premium that the Trustee got and that the Trustee then should share that premium with your shareholders.

MR. KEISMAN: Your Honor, I don't know if I can reach that point at this point. The cases go in various direction on what is an improper sale of control premium.

But we have an offer before us apparently, your Honor, that says they're going to give the public equal value as they give the Trustee.

Your Honor, I think, has just mentioned a very important point. There might be another tender offer for control which wouldn't give the public the same as the price at which it sought the control block. This may be the most equitable opportunity the public will have.

We can't speak to that. As Mr. Gould said, there might be substantial competition if your Honor will allow that competition.

THE COURT: Well, it's a fascinating business, tender offers.

MR. KEISMAN: Fascinating and a fairly serious business for the public at that time.

THE COURT: Thank you, Mr. Keisman.

MR. KEISMAN: Thank you, your Honor.

MR. SULLIVAN: May it please the Court, I shall confine my remarks to reasons why Fuqua should not be permitted to intervene in this proceeding.

Mr. Topkis of Judge Rifkind's firm will comment on the proxy statement and other matters relating to the Avis Corporation itself as it's involved in this proceeding.

Now, Mr. Gould has stated that there's no question in his mind that an offer to purchase the outstanding shares of Avis stock held by the Trustee brings him within the purview of Rule 24 of the Federal Rules.

He has not indicated to your Honor that the decisions have said that you must have a substantial interest. And the interest must be one that is in existence, must be direct and not contingent.

Now Mr. Gould has stated on behalf of Fuqua that they reserve the right to withdraw their offer if the meeting is held on Wednesday and the proposed amendments to the Charter and By-laws are passed.

Now that is hardly an interest in the Avis matter that's now before your Honor. In our brief we cite a case which I'm not going to review for you, but it's the Old Colony Trust case against Penrose Industries.

THE COURT: Yes.

MR. SULLIVAN: Now, in their brief the Fuqua attorneys cite the case of Cascade Natural Gas against El Paso Natural Gas. That was a case in which the El Paso was under an order to get rid of a good many of its gas properties out in the West --

THE COURT: I'm familiar with that case.

MR. SULLIVAN: All right.

Let me read to you what the Third Circuit said with respect to that case: "Appellants place great reliance upon the recent opinion of the United States Supreme Court interpreting

Federal Rule 24(a)(2) in the case of Cascade Natural Gas versus El Paso Natural Gas. There the court said the interests of the parties permitted to intervene therein differ so materially from that for which Appellants seek recognition here as to require no further elaboration."

In other words, in that case on which Fuqua relies there was a great public interest in how the gas was going to be distributed or whether or not would be distributed by responsible companies.

Therefore there is nothing that I can add to the substantial interest point which Fuqua has not demonstrated here, which they must in order to bring it under Rule 24.

I have considerable difficulty as to the Court's jurisdiction in this matter. There is no federal claim raised in the complaint, there is no constitutional question raised, there is no federal statutory question raised. And so I raise that point for your Honor to consider, as to whether or not you do have any jurisdiction here.

I recognize that you've been with this problem for a long time and that may be a reason why you want to see it through to the end, that is, the divestiture of the Avis stock held by the Trustee. But apart from that --

THE COURT: It isn't what I want to do. I've got a bear by the tail.

MR. SULLIVAN: You're obliged to do.

THE COURT: Right.

MR. SULLIVAN: But apart from that, there is no federal question here and there is no statutory question or constitutional question.

Now normally in asking for injunctive relief a plaintiff must make a much more attractive showing than what the Fuqua people have made.

Injunctive relief is very extraordinary relief. And it seems to me that I can dispose of that point; namely, that they should not ibtain an injunction, by referring to one of the criteria, one of the four major criteria - and that is that the petitioner must show that without the relief he will show irreparable harm.

Well, if he doesn't get an injunction here he's in the same position that he was before he filed these lawsuits. There's no irreparable harm he can point to. He can point to the possibility of gain, but there's certainly no irreparable harm.

And the other criteria are equally important, but I won't take the Court's time because we have briefed them.

THE COURT: Yes.

MR. SULLIVAN: Now the final point that I would like to make refers to a comment that Mr. Gould made when he said that Fuqua was looking into the Avis situation seven or eight months ago.

It's interesting that one of the partners of Mr. Gould telephoned a Mr. O'Brien of my firm on December 14, 1976, stating that an unnamed client of that firm was interested in purchasing the Trustee's shares.

Now, we assume, or it's entirely appropriate to believe that Mr. Constance of the Gould firm was probably talking about the Fuqua interest in Avis, particularly in light of the fact that Mr. Gould said seven or eight months ago they were discussing the possibility of moving into the Avis picture.

Now if they knew seven or eight months ago that they were interested, I think they're barred by laches as a matter of equity. And the mere fact--

THE COURT: Did you check to see when Mr. Prather bought his single share?

MR. SULLIVAN: I did not, your Honor. I'm sorry.

Perhaps somebody here can supply you with that information.

THE COURT: I was just curious.

MR. GOULD: Your Honor, it's 1972.

THE COURT: 1972.

MR. GOULD: June, 1972.

MR. SULLIVAN: But the Fuqua organization sat idly for five or six months, or perhaps longer, until they saw the proxy statement.

Well, that's not a sufficient reason for them to come in now and upset the orderly procedure of the Trustee in not only having this corporation run on a very profitable basis, but also his orderly procedure to dispose of this remaining stock through public offerings.

I think the Fuqua application should be dismissed.

THE COURT: Thank you, Mr. Sullivan.

Mr. Topkis.

MR. TOPKIS: If your Honor please, I'll try to be very brief. And I'm aided in my quest for brevity, your Honor, by the relative novelty of this proceeding.

Your Honor spoke earlier of this Court being famed as a court of first impression.

THE COURT: But only because Mr. Gould wanted to identify this case as a sport.

MR. TOPKIS: Well, I think it is a sport. I would agree with that. Not in the sense of mutation, but if I may suggest an analogy to this Court.

I've read the complaint and among other shortcomings that I find in the complaint is the lack of a cause of action. I don't know what Mr. Fuqua's basic grievance is here, but one thing I am sure of, and that is that it is one never before seen in any court of justice.

He is a little bit something like this: Dick and Jane fall in love with each other and they decide to get married. They get their parents' consent and the engagement is announced. It appears in the newspapers, the caterer is hired, a deposit is paid and the church is reserved for Wednesday.

All of a sudden J.B. Fuqua shows up saying, "I want to propose to the bride and I want the wedding adjourned until she has an opportunity to consider my offer. And if you won't adjourn the wedding, then I'll withdraw the offer".

Now what in the name of heaven kind of game is this? It may be appropriate for levity, but for jurisprudence I think it has its failings.

I've been assigned the task specifically of focusing on the registration statement and its alleged shortcomings. And that, too, is an exercise in Alice in Wonderland.

Apparently, if I listen to my friends, our basic problem is that in our registration statement we engaged in fact and not in prophesy. In our registration statement issued May 4 we did not inform the public that on May 15th Mr. Fuqua would announce an offer. Mea culpa, or my partner's culpa. We don't write registration statements that way.

Another terrible sin that we committed: on May 4th we did not reveal the fact that on May 16th we would file a registration statement.

Of course not. On May 4th we hadn't decided to file the registration statement. Sure, we were thinking about it, and that we told the world in the proxy material. That is to say we told them that the Trustee was bent on disposing of the stock in orderly fashion.

If we had said more than that, if we had predicted, prophesied, then we would really be in the ring.

Another terrible sin that we committed I am told is that we said "could" and we should have said "will". I'm sorry, again, where a lawyer's caution, if you will.

I'm sure that if we had said "will" they would have been on our necks because we went too far; we should only have said "could".

And finally there is the terrible sin involved in failing to proclaim to the world that the Trustee gets paid for his work, and so do his lawyers. Well, if those were facts utterly unknown to the shareholder public, then the shareholder public believes in free lunch.

These fees, after all, as your Honor pointed out, are paid by ITT, they are approved by the court, they are matters of public record and they are inevitable.

Now any one of those factors I should think should eliminate them from serious consideration as matters that require --

THE COURT: You mean it's graven in stone that the trustees who are performing a public service have to get paid?

MR. TOPKIS: It's not graven in stone, your Honor. I just think that the chances are as good that trustees are paid as that all the lawyers here in court are probably being compensated for their time - with the exception of one that I can think of who is probably here on a hope.

But few trustees operate on hope.

Your Honor, I don't think that -- again we're dealing with matters of first impression. This can't be taken seriously. But in any event, we've corrected it all. "Corrected". There was nothing wrong to begin with.

And Mr. Keisman shows up and says that we should have advised the shareholders in our supplement that Fuqua threatened to withdraw his offer unless, I don't know, he picks up his marbles and goes away if we voted for the propositions that he didn't like.

If that's Mr. Keisman's grievance, Mr. Keisman should go home, because we told the shareholders that in the supplement. And let me read it, if I may:

"Fuqua's proposal to the Trustee stated that Fuqua would not be interested in purchasing the Trustee's shares should the stockholders of the Company approve at the annual meeting the amendments to the company's certificate of incorporation and By-laws set forth in the proxy statement previously mailed to stockholders".

So I'm at a loss to understand Mr. Keisman.

Now, Mr. Gould says that the stockholders should have more time to brood over Mr. Fuqua's proposal. He says we didn't send out our supplementary material until May 19th, when after all we got his offer on May 17th.

Who's doing was this problem - ours or Fuqua's? It was Fuqua who knew that he was interested in this corporation back in 1972 when he put up Prather to buying one share so he could get all the dope on it as the years went by.

It was Fuqua who last December had his counsel contact Whitman-Ransom and talk about making an offer for the Trustee's shares.

And it was Fuqua who waited until May 17, a week before the meeting, to deliver his offer finally.

Then he complains because we didn't get our announcement out of his offer until May 19th.

I'm reminded of that ancient definition of chutzpah. I won't bother the Court with it.

If Fuqua can get a meeting adjourned on this record I can envisage no circumstances in which a raider cannot hold up the orderly processes of a corporation.

Judge Weinfeld's decision, and the others cited in our brief, make it clear, I think, beyond the slightest question that the courts of this nation have unanimously set their face against such raider tactics.

Just one final word of summation, your Honor. How is Fuqua hurt here, really? He can't get his offer considered, he says. Of course he can. If our proposals go through the only thing that will be required will be that any proposal that is submitted for the Trustee's shares will have to pass muster with two-thirds of the corporation's independently selected directors.

What's so terrible about that for a corporation which is in a transition stage, which is moving out from under the supervision of a court to the free land of public existence?

If Mr. Fuqua is so afraid of having two-thirds of these disinterested directors pass on his offer, then I suspect that there must be something wrong with his offer.

In any event, that is surely no basis for holding up our meeting. Delay, after all, won't change the situation. Their case, which they don't have, won't be tried. There's nothing to try. So there's no need for delay.

But one thing would happen if this meeting were adjourned: the word would get out that again Avis stubbed its toe. This corporation that has been plagued with misery for so long would have lightning strike again. Employee morale would be interfered with, I think we can forecast with certainty.

Our licensees would be anxious. There is an affidavit to that effect before your Honor.

But most basic, the sad effect would be that the orderly progress of Avis toward independent standing as a self-respecting, self-sustaining corporation would be interfered with, for no reason whatsoever except the greed of some sharpshooter who thinks he sees a bargain. I don't think that's a basis for this Court to act upon it.

Thank you, your Honor.

THE COURT: Thank you, Mr. Topkis.

MR. GOULD: If your Honor has no one else to be heard --

MR. JAFFE: Your Honor, the United States would like to be heard.

Your Honor, I am Matthew E. Jaffe representing the United States.

I would like to present my two colleagues who are here with me: Betsy Wurzburg and Ruth Dicker.

THE COURT: All right, Mr. Jaffe.

MR. JAFFE: May it please the Court, the United States did not learn of Fuqua's offer until last Tuesday, and we did not learn of Fuqua's proposal to intervene into our case until last Thursday, and we did not receive a copy of their memorandum supporting their intervention until Friday evening.

As to Fuqua's motion to intervene in this action, we oppose that motion on the ground that they have no legal right to intervene because it has no cognizable interest under Rule 24(a) of the Federal Rules of Civil Procedure.

We suggest that to conclude otherwise would enable any potential purchaser in an antitrust suit involving divestiture to claim a right of intervention. Such a conclusion would result in great confusion and prolongation of antitrust litigation.

Our reasons for opposition are set forth more fully in our response to Fuqua's motion to intervene which we filed with the Court this morning. We do have no objection to the Court hearing the views of Fuqua as amicus curiae

THE COURT: You heard them.

MR. JAFFE: I would like to take this opportunity to state the position of the United States regarding divestiture of Avis. That position is that the divestiture of Avis to a qualified purchaser in a manner which will result in its being a viable competitor in the rental car business should take place as soon as possible.

Such divestiture may be carried out by any method, as was indicated in the original final judgment. Any method would include, but not be limited to, a sale of stock to the public by means of a public offering or a series of public offering, a sale for private purchaser, or a spinoff to ITT shareholders.

To the extent that Fuqua represents a possible means of divestiture we feel that they should be heard as amicus. It is not our position, and never has been, that divestiture must or should be accomplished by any particular method.

We are aware of Trustee Order Number 3 in which this Court directed and authorized the Trustee to begin disposition of Avis by way of a series of public offerings.

We do not believe this order requires a

Trustee to forsake other methods of divestiture if such other methods appear to become more expedient.

Because it now appears that a private sale may result in an earlier completion of divestiture of Avis and spare all involved from a prolonged and perhaps uncertain divestiture process, we urge that the Court instruct the Trustee to consider private offers and not to turn all such offers away out of hand.

We see no reason why the Trustee cannot discuss a private sale even while he prepares for a public sale. If such private sale is negotiated, then the parties could consummate that sale.

If no such sale is negotiated, the Trustee would be free to proceed with the public sale.

It is our position that the option of making a private sale should not be closed. Any action by the Trustee which would work at odds toward achieving divestiture by any particular method, such as a private sale, ought not be taken without good cause.

To the extent that the adoption of Proposals 2 and 3 set forth in the May 4th Avis proxy statement might lessen the ability to make a private sale, we urge that the Trustee not vote for the adoption of such proposals.

THE COURT: What was your opening statement that you read there, something about a viable unit?

MR. JAFFE: We feel that Avis should be divested by any method which would result in its being a viable entity in the rental car business.

THE COURT: All right.

MR. JAFFE: Thank you, your Honor.

MR. GOULD: Would your Honor give me about two or three minutes more? I want to reply. I'll be very brief.

THE COURT: All right.

MR. GOULD: First of all, I'm very disappointed to hear Mr. Topkis refer to my clients in this case as raiders.

They are not raiders. I suppose a raider is anybody who wants to take over a public company that's not represented by Mr. Topkis' firm.

THE COURT: I mean if this is going to be the character of your response, I'm not going to listen to you for two or three minutes.

If you've got something constructive--

MR. GOULD: I do have something to say.

THE COURT: All right.

MR. GOULD: I can't match the wit that was employed, but I can deal with the veracity.

I copied down what Mr. Topkis told your Honor. He said of course, we didn't say on May 4th that we were going to do a registration statement because - and this is the quote - "We had not decided to file a registration statement".

I direct your Honor's attention to Paragraph 27 of Mr. Smith's affidavit in opposition to our motion in which he says that at a meeting of security analysts on March 24th, 1977, it was announced that the Trustee was adhering to his plan for the public distribution of the shares and at his next offering approximately one half of the shares would be in June, 1977, provided that market conditions were favorable.

So I would have to attribute that statement of Mr. Topkis to the enthusiasm of advocacy.

Next, some reference was made by Mr. Sullivan to the Old Colony case. I simply want to direct your Honor's attention to the fact that in the Old Colony case the court, faced with a situation not very different from what we have here from a technical point of view, concluded that it was appropriate and directed that the proposed intervenor's offer had to be considered.

Finally, I would like to make a practical suggestion to the Court because I am mindful of the problems which we have posed to your Honor and of the circumstances in which they have been posed; and that is that we resort to a device which has often been used in these situations.

I'm not oblivious to the fact that a vast machinery has been set in motion to hold a stockholders meeting, to get proxies out and get them in, and that fellows are out beating the bushes to get them in, and it costs money and it's other people's money.

And I would suggest that at the very least what should come out of this proceeding this morning, that is, if your Honor feels if there is any merit whatever in our position and in the position advanced in behalf of the stockholders - a position which acquires a little more merit since the Government has spoken now - I would suggest that one way of dealing with it is that they hold their meeting on Wednesday, but they don't implement anything, and we could probably work out a stipulation which would make it possible for the Court to get a reasonable time in which to act with respect to something like that.

Now that's a practical way of dealing with this. In view of the problems that have been posed to your Honor this morning, I think it requires careful attention. I know it can't get that kind of careful attention between now and Wednesday morning. I know that we have not been able to do our job properly and I don't think we can ask a Federal Judge to do their job properly --

THE COURT: After you spoil a week-end, then you come in and you say you figured out a way that we didn't have to go through all this.

MR. GOULD: Well, I hope we didn't spoil your Honor's week-end. But I assure you that to the extent that it was spoiled mine was also spoiled.

I would not have made this proposal, your Honor, but I heard what the Government said. I think the critical thing that was made in the Government's exposition is that they urge the Trustee not to vote in favor of these resolutions. That's a voice that ought to be heard.

Now that's much more interesting to the stockholders perhaps than it is to Fuqua, but it ought to be heard. And our voice ought to be heard. And maybe we ought to get down to the economics of this thing and what is right for the faceless people.

It's all very well for us as lawyers to

interpret the nuances of this proxy statement. For example, it was said to your Honor everybody knows that trustees get paid, in response to a question your Honor put.

I wonder if the laity know the trustees get paid. I don't know. But I'd like to hear something about it. And there are a lot of other things about this case that maybe ought to be laid out.

So what I urge on your Honor is if your Honor feels that you don't want to go as far as to enjoin this meeting until you wrestle with the substantive problems, let them hold their meeting, let's have a hearing in the intervening period, and then and only then, on the further order of this Court, implement what's done at the meeting.

MR. KEISMAN: May I have thirty seconds in rebuttal?

THE COURT: Who are you going to rebut, me?

MR. GOULD: I guess me.

MR. KEISMAN: I speak for the same relief, but I just wanted to make the point that in the stockholders suit in the Miller action no one has questioned your Honor's jurisdiction over that case wherein the same relief is sought.

And if there is any question whether the Fuqua plaintiff has standing, there is no question but plaintiff Miller has standing as a separate action and a separate motion for an injunction before your Honor which could be a wholly valid vehicle for the carving out of such relief as your Honor thinks is merited here.

MR. SULLIVAN: Just a few brief remarks, your Honor, in reply to the representative of the Department of Justice.

While I realize that you know much more about Trustee Order Number 3 and Trustee Order Number 5 than I do, I must bring to your attention that the Department of Justice did not object to either of those orders at the time they were entered.

But they come here today at this late hour and object to the trustee voting his stock in favor of Propositions 2 and 3 of the proxy statement.

They, like Fuqua, are also a little late in the day, so far as the stockholders ofthis corporation are concerned.

THE COURT: All right.

I tell you what I'm going to do. I'm not sure I understand what Mr. Gould is talking about when he says hold the meeting, but not implement anything.

But I'll give the principal, or at least counsel here a chance to explore that and we will resume at two o'clock.

I have another matter. I could either stay here for another half hour now or come back at two and utilize the half hour to finish what we have started here this morning.

As I say, I'm not sure what Mr. Gould means when he says hold the meeting, but not implement anything.

I'll find out about that at two o'clock, I hope. Maybe even ten minutes to two I'll be in chambers. I should be back from lunch.

So with that, we will recess until two o'clock.

(Luncheon Recess)

AFTERNOON SESSION

MR. GOULD: If your Honor please, is it appropriate for me to address the Court? Do you want to hear from me first?

THE COURT: About what?

MR. GOULD: About this proposal that we were discussing.

THE COURT: Was it accepted?

MR. GOULD: No, it's not accepted.

THE COURT: Well, then there's no sense hearing about it.

MR. GOULD: Well, your Honor said you didn't understand what I meant by it.

THE COURT: I guess I understand now.

MR. GOULD: Thank you, your Honor.

THE COURT: I've had a chance to reflect upon it somewhat.

Yes, Mr. Jaffe?

MR. JAFFE: Your Honor, I would like to clarify two points on the Government's position, if I may.

May it please the Court, we would like to emphasize two points to the Court regarding our position.

First, the position of the United States is the divestiture of Avis to a qualified purchaser in a manner which will result in its being a viable competitor in the rental car business should take place as quickly as possible. The divestiture may be carried out by any method. We express no preference as to which method.

We do feel that all avenues by which to accomplish the divestiture should remain open. Therefore, if the Court finds that the adoption of Proposals 2 and 3 as set forth in the May 4th proxy statement substantially foreclose a method of divestiture, the United States is opposed to the adoption of such measures.

Second, we want to make it clear to this Court that the United States is not taking any position at this point as to any particular purchaser or transaction.

That concludes my statement, your Honor.

THE COURT: All right, Mr. Jaffe. Thank you.

MR. SULLIVAN: May I comment briefly, your Honor?

It has been said here today that a vote in favor of Propositions 2 and 3 will prevent a tender offer. That simply is not true. Many corporations with provisions similar to these have had tender offers made after the provisions were adopted by the corporation and those corporations were taken over by tender offer or merger.

Now with respect to the position just stated by the Department of Justice, Mr. Smith now holds 47 percent of the Avis stock and through another public offering with which you are familiar he will own 22 percent. That, to me, means that there are very decisive steps being taken to have him divest himself of all Avis stock, but in a manner under which he, as Trustee, carries out his duties to the stockholders who have purchased stock previously from ITT, and those who have purchased previously from him will be protected and have a viable corporation remaining when all of the stock has been sold.

To sell it in block to a company like Fuqua would, in the Trustee's opinion, be very unwise and would be unfair to the present stockholders.

Finally, any delay with respect to the acting upon the provisions that will be before the meeting on Wednesday and implementing those would probably cause the Trustee to be required to withdraw the registration statement now pending for the sale of two million shares. And that would be, in our judgment, a catastrophe to the viability of the Avis Corporation in the future.

Thank you.

MR. TOPKIS: Could I have a final word, your Honor? I'm sorry.

THE COURT: Final words.

MR. TOPKIS: I promise it will be for me, at least.

THE COURT: All right.

MR. TOPKIS: Just these thoughts, your Honor.

First, in light of the Department of Justice's comment, I would like to make it very clear that adoption of these proposals which we hope to vote on on Wednesday will not preclude any offers for the Trustee's shares from coming in, nor will it preclude their being considered.

It just means that an offer aimed at merger will have to be good enough to pass muster with two-thirds of the independent directors who were selected and voted upon in accordance with the procedures established by this Court.

It doesn't even foreclose Mr. Fuqua. He can continue to make his offer.

He says he'll pack up his marbles and go away. But he can come back and he'll be just as welcome as he was initially.

And I might say --

THE COURT: Listen, you have to let the Court in on these asides that provoke all the laughter.

What was it? Did you hear it?

MR. GOULD: I think I was the guilty one.

What provoked the laughter was Mr. Topkis' statement that Mr. Fuqua would then be as welcome as he is now. And we all concur in that point of view.

THE COURT: All right.

MR. TOPKIS: There need be no limitation whatsoever on private bidding. In fact, while we were out at lunch Professor Shapiro and Mr. Troub both, in collegiate assembly, advised me that there have been a number of recent occasions when corporations with parallel restricted by-laws and certificates of incorporation were the scene of very bitter private contests.

The names that were mentioned were Microdot, Copperweld Steel, Desiret Pharmacal and Gray Tool. They came to mind very, very quickly.

So that the Department of Justice's desire that private bids come in and be considered to the end that there be speedy disposition of these shares can be accomplished without the slightest hindrance by the provisions that we seek to have adopted. All that will be accomplished is that nobody will be able, by buying 47 percent of the stock and picking up another 3 percent perhaps over in the public market, be able to frustrate the desires of 49/52nd of the public shareholders of this company.

That's what we're out to do. We're out to get them protection, the protection that a vote of two-thirds of these independent directors will secure to them.

Thank you very much.

MR. KEISMAN: Your Honor, may the public stockholders --

THE COURT: No, I'm sorry. We're not going on ad infinitum here.

As it is, this case has come up under constraints imposing time pressures on the Court and on everybody else who is involved, just because these lawsuits were commenced only this past week and a week before a scheduled shareholders meeting of the stockholders of Avis.

I have three complaints before me on an order to show cause: in Prather and Avis, Miller and Avis, and I have one from Fuqua to intervene in the case of United States against ITT, which is the matter presently pending in this Court requiring divestiture by ITT of its stock in Avis.

The order to show cause of Prather and Miller asks for a preliminary injunction restraining the Trustee Smith and Avis from voting shares at the meeting of May 25th, or soliciting proxies with respect thereto, and restraining Avis from holding the meeting of May 25th until the allegedly material misrepresentations and omissions in the pr[illegible] statement for said meeting are corrected.

The Fuqua show cause asks for similar relief, but in addition requests that it be permitted to intervene in U.S.A. versus ITT.

Now, there is some interrelationship in these actions and some overlap in the presentation, but I shall endeavor to sort out the issues and deal with them as they relate to each of these cases.

Jurisdiction in the Prather and Miller

cases is predicated on Section 27 of the Securities Exchange Act of 1934. I will talk about the possible basis for jurisdiction in Fuqua's case a little later.

Now, the Prather and Count One of the Miller shareholders suit allege violations of 14(a) of the '34 Act and Rule 14(a)-(9). According to Avis, Prather is a vice president of Fuqua and while his is not a class action it is, I suppose, conceivable that his interest as a shareholder and those of Fuqua as a purchaser might diverge and create a conflict for joint representation.

There has been no discussion about that. I suppose the shareholders have one interest and Fuqua has another.

Argument might be made, and I suppose Mr. Gould would make it, that what's good for Fuqua is good for the shareholders and, therefore, there is no conflict. But, at any rate, there is a point that may occur to someone and I am reluctant to overlook making mention of it.

Now, Miller also asks for class action status. Well, those are the cases. So discussing first the question of the proxy statement, Rule

14(a)-(9) provides, "No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which at the time and in the light of the circumstances under which it is made is false or misleading with respect to any material fact or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading".

So that's a statement of the law that we are concerned with.

Now, Prather and Miller are concerned with two particular items on the May 25th agenda as set forth in the proxy statement. And Item 2 on the agenda is a proposal to amend the By-laws to provide for a staggered Board of Directors -- staggered terms, I guess, of Board of Directors -- to provide that Directors may be removed for cause only, to increase the number of Directors necessary to make a quorum, and to amend the certificate of incorporation to require a special stockholder vote to change the above By-law.

Item 3 is a proposal to amend the certificate to require special Director or shareholder votes for mergers and consolidations, and for the repeal of that provision.

Now, Prather and Miller, supported at least as amicus by Fuqua, allege that the proxy statement is misleading in that it misrepresents or omits certain material facts within the definition. First, that the statement does not disclose the Fuqua offer to the Trustee.

Now, this offer was dated May 16th, but received by the Trustee late on May 17th. It offers $15.50 per share to the Trustee for the shares of stock of Avis which he now holds as Trustee - some 47 percent of the outstanding stock.

If permitted to purchase the Trustee's shares, Fuqua states it will offer the public shareholders a tax-free stock exchange at the equivalent price paid by the Trustee. Just when and just what form this offer will take has not been explained anywhere, although counsel say that they know a way of doing that under the provisions of the Internal Revenue Code.

The proxy, in fact, states: "Neither the Company nor the Trustee is aware of any pending or proposed transaction that would be affected by the proposed amendments". And the plaintiffs contend that an update is necessary.

I suppose the evidence does disclose that at the time this proxy statement was issued the offer had not then been made. So when made it was not false or misleading for failure to include that information. Whether an update is now necessary presents another question.

Number 2, the allegation and claim is that the proxy at various points says that the tender offers could be discouraged or deterred.

Well, the open, articulated explanation by the Trustee in the proxy statement reveals the purpose of the proposed amendments clearly: to discourage, that it might discourage takeovers, and that it will constructively strengthen present management and give some continuity to an operative program that has been carried on successfully since the Trustee first had an interest in this corporation.

According to the plaintiffs, such offers will be discouraged and the Fuqua offer, in particular, will be withdrawn if the changes in the By-laws and certificates are approved.

The third point raised or claimed to be an omission or a misstatement is that the proxy fails to disclose that the Trustee on May 17th registered a proposed secondary offering of two million shares of stock. This omission from the May 4th proxy is said to be willful and it is, according to the plaintiffs, a material omission necessary to correct the statement, which is that the Trustee currently intends to dispose of the remaining stock held by him by means of additional public offerings from time to time.

This information is said to be particularly material, that is, the information omitted, because as the Trustee disposes of his shares Avis becomes a more attractive target for tender offers.

And, fourth, the proxy statement does not disclose the interests of the Trustee, or Mr. O'Brien, in discouraging officers to purchase the trust property.

This argument is put forth through several allegations: (a) that the compensation of the Trustee is not set out; (b) that the relationship between Smith and O'Brien and Whitman & Ransom, the law firm of which they are members, is not disclosed, that is, that Smith retains his law firm as counsel; and (c) the fact that the Trustee controls the Board is not stated - an omission which is claimed renders the Board's recommendations misleading.

Of course, as I pointed out earlier during the course of the colloquy between Court and counsel with respect to this case, the Trustee has said or the statement does reveal that the Trustee "...may be deemed to control the company within the meaning of the '34 Act".

Well, as I said, Fuqua makes similar allegation and also seeks to intervene. And the primary relief that Fuqua demands in its underlying complaint is that the Court amend Trustee Order Number 3 to permit the sale of the trust property to Fuqua.

Fuqua asserts if the above items are passed, that is, 2 and 3 in the proposed shareholders meeting, it will withdraw its offer. It contends that the Trustee order should be amended because the Fuqua offer is not subject to the infirmities of prior private purchases in that

(1) it offers a price above the market and (2) in cash and (3) it will put an immediate end to an expensive trusteeship.

Those items, in the large measure, present issues in common. And I suppose a principal issue is whether the proxy solicitation is misleading; are the misrepresentations and omissions material.

The question is whether the information furnished would enable a shareholder with a right to vote to make an informed decision on these questions. And if the failure to disclose the intended registration of the secondary offer is misleading, it is my view that the materiality of that is dubious.

The shareholders are aware that the Trustee is disposing of his stock by public offering. And that fact is relevant to their decision on the amendments to discourage tender offers, but the exact date is less material.

They've known all along. The Court has known all along. The program for timely or periodic divestiture of part of this stock held by the Trustee is a program that was adopted with the full understanding and participation of the

Court.

Now, at this point I want to interject something that has not really be dwelt upon in the course of the arguments, but which I think is important.

It has been adverted to and it is characterized, I suppose, by the statement of Mr. Pomerantz that this case is a sport.

MR. GOULD: I think you are referring to Mr. Gould.

THE COURT: On my knees I ask forgiveness.

MR. GOULD: The first time that I can grant the Court forgiveness.

THE COURT: I was going to explain what makes this case a sport.

ITT owned all of Avis. It was a wholly-owned subsidiary. They were ordered to divest. And they did divest themselves of certain chunks of stock, some 30-odd percent, at prices up to $42 a share during the period when they had control of Avis and prior to the expiration of three years from the date of the decree, the period during which they were to divest.

But at the time when the three years expired that stock was selling for slightly a fraction above 6. And that's the time when the Trustee acquired the 63 percent of the shares of Avis.

The Board of Directors on Avis at that time were directors selected by ITT. Those directors have since been replaced and today those are all independent directors.

The difficulties of keeping Avis viable as a competitive entity, which was part of the reason underlying the divestiture which was required by the decree to maintain competitiveness, requires that Avis be nurtured back into a strengthened viable, if you will, automobile rental company.

Now the record on that has been good up to now. That stock is now selling for 15 and -- well, I didn't check the market today, but it's in excess of 15. And that is a very substantial increase in value of those shares for any shareholder who has continued to hold his Avis stock.

Now there may be a lot of reasons for it. But there has been emphasis by the Court through its interest in the reports received from the Trustee, and in the way this business has been operated and the way it has been strengthened, and the Court has been encouraged by the results thus far attained in making this into a viable and competitive rental auto company.

Not only that, but the existing shareholders have a stake here, which is what makes this unique.

It is true these outstanding shares overhang the market. But the threat that they pose to the market has been diminished and contained to a degree by the perceptiveness and the wisdom and the concern of the present Board of Directors and the Trustee that that chunk of stock representing control should not suddenly disrupt the whole question of the marketability and the value of that stock.

So that Trustee Order Number 3, when adopted, had a purpose. And it's as Mr. Jaffe has stated: to maintain a viable competitive organization.

As it happens, doing that has helped the stockholders. It may eventually help ITT, who is the ultimate beneficiary of what is realized from these shares.

Now that was something that I thought I would advisably interject at this point. Because it is my view, and I find, that it is not material that the exact date when this offering will be made was not disclosed in the proxy statement.

The whole purpose and program is well known to every shareholder, it's uppermost in the minds of all of the Directors, and it was certainly basic to the original order which was approved by this Court.

And, by the way, never challenged by the Department of Justice, nor by anyone else until this date.

I do believe it might be necessary to update the proxy to indicate the terms of the Fuqua offering under Rule 14(a)-(9). As I understand it, that has been done as promptly and as expeditiously as time would permit.

And the defendants very properly point out that it is Fuqua's delay that caused the problem. They were well aware, or should have been, for a long period of time before last week, that they were going to make this offer.

So that it is difficult for me to see how laches does not affect the ruling that the Court ought to make with respect to that update. Because whether Mr. Gould knew in December, had a prospective buyer that was then Fuqua or not, certainly knew the very day that this statement was issued on the 4th of May what the situation was.

And actually in his Trustee's report dated April 20th and filed with this Court, which is a matter of public record, Mr. Smith indicated what the proposed shareholder amendments were that were going to be presented to the shareholders for action.

Also not disclosed today in that connection is the fact that these proposed amendments came about as a result of a study in some [illegible] by an ad hoc committee of the Board of Directors. I forget who they are. Mr. Haack and --

MR. TOPKIS: Scanlon and O'Brien.

THE COURT: Scanlon and O'Brien. All right.

You know who Mr. Scanlon is. He's a former high official for many years with A.T.T.

And you know who Mr. Haack is. He's been around. You fellows have seen him around on the floor of the Exchange and on the highways in the vicinity of Wall Street, and he's well known in the financial community, and I suppose exceedingly knowledgeable about the ins and outs and the effect of amendments of the kind proposed. I have no reason for believing that those men had any ulterior motive or desire to perpetuate anybody in office. Their interest is that solely as independent directors.

The plaintiffs argue that the provision in the proxy statement that these amendments could discourage tender offers is misleading. They contend that the proper verb to use is "will" discourage.

Well, I don't agree with that. I think that this is a sufficient explanation so that no shareholder called upon to vote would be misinformed or not fully informed so as to render an informed decision on that question.

Then the point is made of a conflict of interest on the part of Mr. Smith and Mr. O'Brien. Now, it's true that conflicts of interest of directors and other insiders are generally very relevant to shareholder decision, and the failure to set out the interests of the Trustee, therefore, is called into question as to whether that is a material omission.

Of course, his interest in remaining a trustee is obvious - he's going to have some benefit or he's going to have an opportunity to earn some fees as a trustee that will be paid - not by Avis, but by the beneficiaries of the trust: ITT.

And, likewise, any expense incurred by him, unlike the usual case which would be borne by the corporation, in this case is being borne again by ITT.

So I say that interest is sufficiently disclosed in my view so as not to make that omission material. However, it's, I think, worthy of notice that the interest has now been disclosed in a supplemental statement so that the shareholders will have the benefit of that.

I think it is sufficiently apparent that this is a pro-management proposal, these changes and, frankly stated, to give a measure of stability to the present managing organization of Avis; one which apparently has done very well in getting Avis straightened out and on a path toward noticeable profitability.

And of course, as I say, the only thing not disclosed was the amount of fees which Mr. Smith and his law firm received. But the amount of those fees are public, they have been approved by Justice, ITT and by me. So there has been no secret about them.

And I would say that the SEC must have some knowledge of that arrangement, but apparently did not think it necessary for the Trustee to disclose his fees. It's relevant, not necessarily decisive, but gives some support to my own view that it was not material.

And O'Brien's conflict I think is not so obvious as Smith's, but again not of such material significance either.

In any case, all of these problems may have been cured by the supplement sent to the shareholders on May 19th. And I suppose the only question there was whether that notice was timely.

And so far as I am able to judge, I would say that that notice is timely under the circumstances here. It could not have been done sooner. If there is a delay or if it's a little late it turns out to be it was not, in my view, the fault of the Trustee.

All right. Now we get to the next question, which is should Fuqua be permitted to intervene.

Intervention is governed by Rule 24 (a)(2) as of right, and Rule 24(b) permissive.

On intervention as of right, the application is not timely. This case has been going along for several years now. The order which they now challenge has been issued several years ago.

Justice opposes intervention, the Avis shareholders or the Avis management opposes intervention, and I am of the opinion that intervention does not lie and should be denied.

I don't think everybody who comes in and wants to buy some of the stock held by the Trustee is entitled to intervene in the original proceedings in order to change what has been done in the past.

Now, Fuqua relies on the antitrust intervention of competitors and a gas purchaser in Cascade National Gas.

In that case the intervenor depended upon the product of El Paso in order to keep in business. I don't understand that Fuqua is short of rental cars for its personnel. They don't want to buy the product of Avis; they want Avis, itself. And as a mere potential purchaser of the stock Fuqua is a stranger to these proceedings and a stranger to Avis, and has been.

So I think that that ruling of mine is

supported by Old Colony Trust Company against Penrose Industries, which was called to my attention by Mr. Gould. That's at 387 F. 2nd 939.

And I have some other notes here that ought to go into the record. The Supreme Court has stated that intervention as of right requires a significant protectible interest. That's Donaldson vs. United States, 400 U.S. 517.

That interest must be direct, not contingent. And that's In Re Penn Central Commercial Paper Litigation, 62 F.R.D. 341 at 346, and affirmed at 515 F.2nd 505 by the Second Circuit, 1975.

Then another case is Kheel against the American Steamship Owners, 45 F.R.D. 281.

Moreover, intervention as of right presupposes that the applicant has a right to maintain a claim for the relief sought. That's 440 F. 2nd 124, Cert. denied, 403 U.S. 905.

Fuqua has no right to demand that the Trustee sell the shares to him. It may be a eager suitor, but it has no right at all.

And I might suggest that the case of U.S. against ITT, 349 F. Supp. 22 at 26 and 27 is relevant, affirmed under the name of Nader vs.

U.S., et al, 410 U.S. 919. It's a case where Mr. Nader sought to intervene in order to challenge provisions of the decree in the settlement of this particular antitrust suit.

Now, permissive intervention depends upon whether there are common questions of law or fact to be litigated and the prejudice to the actual litigants. Well, no one is yet litigating any matter respecting of the Trustee's breach of fiduciary duty. There is some allegation in Miller, Count Two, but the rule to show cause does not embrace what is alleged in Count Two.

All right. So what is before me today is to decide whether a preliminary injunction should be granted today against the holding of that shareholders meeting on the 25th.

The criteria to be considered are those which are set forth in Sonesta International Hotels, a recent Second Circuit case cited by all parties. And that requires a showing either, one, of probable success on the merits and possible irreparable injury; or, two, sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting preliminary relief.

Well, as to Prather and Miller, the likelihood of success on the merits is unclear and dubious. Because their claim is related to the materiality of the omissions with respect to the interest of the Trustee and the materiality of the registration of the secondary offer.

So far as the existence of the Fuqua offer is concerned, that does seem material. But all of this may have been corrected by the May 19th letter. The letter at least casts doubt on the probability of success on the merits.

So I think the likelihood of success on the merits is doubtful.

Then comes the question of irreparable injury. Well, there is great reluctance on the part of courts to enjoin the holding of an annual meeting and the courts rarely find that the stockholders will suffer irreparable injury.

Judge Owen recently said, and I quote: "If the plaintiff hereafter demonstrates that the proxies were unlawfully obtained and utilized the results of the annual meeting may then be set aside, the proxies resolicited and a new vote held". That's in Clairdale Enterprises, 423

F. Supp. 261. And a case in the court is Jewelcor, Inc. versus Pearlman, 397 F. Supp. at 252 and 253.

And Judge Weinfeld, whom we all know, said the same thing in McConnell vs. Lucht, 320 F. Supp. at 1166 and 1167, pointing out that enjoining the meeting was an undue interference with corporate affairs, shareholder democracy, and could adversely affect the company's credit rating and market value of shares.

Those were factors adverted to here by counsel for Avis.

And in McConnell Weinfeld, J. also criticizes eleventh hour suits.

In addition there's a notion that enjoining the meeting may put present management at an unfair disadvantage in the later solicitation of proxies because the ruling of the court enjoining this meeting carries somehow some sort of stigma.

The only other irreparable injury the shareholders could allege is they are deprived of the benefits of the Fuqua offer.

Well, in reality they are denied the benefit of having the Trustee and the Court consider the offer at this point. But the pocketbook injury to the shareholders is remote since it is unlikely that this Court would order the Trustee to accept the offer.

Because when you come down to it, the test at that point is whether this is a reasonable business decision. And there are many factors involved in whether that offer is reasonable, as pointed out in the affidavits of Professor Shapiro and Mr. Troub, both very experienced and knowledgeable and with a high reputation in the field of corporate finance, and on whose opinions I place considerable weight.

Furthermore, if the results of the meeting are later set aside, Fuqua is free to bid again under the conditions which it prefers.

And, finally, any loss which is sustained is compensable by money damages. What the shareholders could conceivably recover is a few dollars more. Well, that's only money, and they are a pretty substantial looking bunch of defendants here, as you've all noticed.

And even if Fuqua were to be granted the right to intervene permissibly or as of right, its chances of success on the merits, that is, to amend Trustee Order Number 3, are extremely remote.

They lack legal standing in this case. As I say, it's not very likely that this Court would force the Trustee to accept the offer of Fuqua, for the reasons which are stated in the affidavits submitted by the defendant.

Furthermore, Fuqua will not suffer irreparable injury. As I said earlier, you can still try to take over Avis - you just have to try harder.

And if the meeting is unlawful, the changes in the by-laws will be set aside and Fuqua can bid again.

The constitutes the ruling of the Court.

As I say, we're involved under some pressure of time and I wanted to be able to make the ruling today so that you can get down to the 17th floor there at Foley Square tomorrow sometime and be heard perhaps before this annual meeting is held.

MR. GOULD: In that connection, your Honor, I will move the Court for an order pursuant to Rule 62(c) - this is in the U.S. against ITT case - that the defendant intervenor Avis be enjoined from holding the meeting on the 25th pending the disposition of the application of

Fuqua Industries to the Circuit Court of Appeals from your Honor's order. And we undertake, of course, to make that application immediately. It is in process of being made.

And I also ask that pending such further order that they be enjoined from tabulating and announcing the vote of the shares of Avis on the matters contained in Proposals 1, 2 and 3 in the proxy statement.

THE COURT: That's denied, with leave to make the same claim before the Court of Appeals.

MR. GOULD: Thank you, sir.

And in the Prather action I make the application in somewhat different language, your Honor, if you'll just bear with me for one moment.

That Avis be enjoined from holding the annual meeting of the stockholders pending disposition of the application to the Court of Appeals for the Second Circuit and that they be enjoined from tabulating and announcing the vote of the shares of Avis' common stock at that meeting on the matters contained in Proposals 1, 2 and 3 of the proxy statement dated May 4th.

I call on counsel for Avis to consent to the making of both orders.

MR. TOPKIS: What? Could I hear that again? I m not sure --

MR. GOULD: I don't want you to suffer from the shock.

I'm making a motion to consent to stay things pending the application to the Court of Appeals.

Your answer is you don't? I gather that from that whimsical shake of the head.

I gather that counsel will not consent. I assume your Honor will rule on that as you ruled on the previous motion.

THE COURT: The same ruling.

MR. GOULD: Thank you very much.

MR. KEISMAN: Your Honor, in Miller vs. Avie we would like again to move for a stay as was moved for in Prather.

Would your Honor require me to repeat the language, or may I incorpoate by reference the application?

THE COURT: You may incorporate by reference and the ruling is the same: denied, with leave to renew before the Court of Appeals.

Short Recess.

* * *

COURT REPORTER'S TRANSCRIPT CERTIFICATE

I hereby certify that the within and foregoing is a true and correct transcript taken from my original stenographic notes of the proceedings on May 23, 1977, in the U.S. District Court, for the District of Connecticut, at Hartford, before the Honorable M. Joseph Blumenfeld, Senior United States District Judge.

Paul Collard
Official Court Reporter

DATED: MAY 24, 1977.

HEMLOCK
ERASABLE
COTTON CONTENT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, : Civil Action No. 13,320
Plaintiff, :
-against- :
INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY, : NOTICE OF APPEAL
Defendants, :
and :
AVIS, INC., :
Defendant Intervenor. :

- - - - - - - - - - - - - - - - - - -x

SIRS:

PLEASE TAKE NOTICE, that the proposed intervenor herein, Fuqua Industries, Inc. ("Fuqua"), hereby appeals from each and every part of an Order of the Honorable M. Joseph Blumenfeld of the United States District Court for the District of Connecticut, dated May 23, 1977, denying, inter alia, the motion of Fuqua to (i) intervene in this action and (ii) enjoin defendant Avis, Inc. from holding the forthcoming annual meeting of its stockholders scheduled to take place on May 25, 1977.

Yours, etc.

Dated: New York, New York
May 23, 1977

SHEA GOULD CLIMENKO & CASEY

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STATEMENT

The following documents are not part of the Joint Appendix. They are part of the papers on file in the District Court prior to the instant proceedings and are being offered by the attorneys for *Miller*, *Prather* and *Fuqua Industries, Inc*.

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CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,
Plaintiff,

v.

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY,
Defendants.

Civil Action No. 13,320

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on August 1, 1969, and the defendants having filed their answers thereto, and plaintiff and defendants, by their attorneys, having consented to the entry of this Final Judgment;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction over the subject matter and the parties consenting hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Act of Congress of October 15, 1914 (15 U.S.C. § 18), commonly known as the Clayton Act, as amended.

II.

As used in this Final Judgment:

(A) "Person" shall mean an individual, partnership, corporation or any other business or legal entity;

(B) "Subsidiary" shall mean a company which a person controls or has power to control, or in which fifty percent (50%) or more of the voting securities is owned or controlled by that person, directly or indirectly;

(C) "ITT" shall mean defendant International Telephone and Telegraph Corporation and any of its subsidiaries;

(D) "Hartford" shall mean Hartford Fire Insurance Company and any of its subsidiaries;

(E) "Avis" shall mean ITT Avis, Inc. and any of its subsidiaries;

(F) "Levitt" shall mean ITT Levitt and Sons, Incorporated and any of its subsidiaries;

(G) "Hamilton Life" shall mean ITT Hamilton Life Insurance Company and ITT Life Insurance Company of New York.

III.

The provisions of this Final Judgment applicable to any defendant shall apply also to each of its subsidiaries, successors and assigns, and their officers, directors, agents and employees, and to those persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. Any person not a party hereto who acquires any securities or assets by means of a divestiture pursuant to this Final Judgment shall not be considered to be a successor or an assign of a defendant.

IV.

(A) ITT is ordered and directed to divest within three (3) years from the date of entry of this Final Judgment, (1) all of its interest, direct and indirect, in Levitt, Avis, and Hamilton Life, or (2) in the alternative, all of its interest, direct and indirect, in Hartford.

(B) The divestiture of Levitt, Avis and/or Hartford directed in subsection (A) hereof shall not be made as a part of the divestiture of any other of said corporations or the Fire Protection Division of Grinnell Corporation, or to any person acquiring ITT's interest in the stock or assets of any other of said corporations, or in the stock or assets of Canteen Corporation, or in the Fire Protection Division of Grinnell Corporation, except upon the consent of the plaintiff or, failing such consent, upon approval of this Court. This prohibition shall not, however, prevent joint, simultaneous, or successive public offerings of the separate stocks of any of said corporations, or the distribution of said separate stocks as dividends or in exchange offers to shareholders.

(C) Subject to the limitations set forth in this Section IV, the divestiture directed above may be carried out by any method; provided, however, that if ITT receives in connection with any such divestiture any securities from a person to whom divestiture is made, such securities (other than securities issued by ITT) (1) shall not be voted, if of a voting class, and (2) shall be disposed of no later than two hundred twenty (220) days after receiving such securities, unless plaintiff consents to a longer period, and provided further that if the divestiture is carried out by way of disposition of assets, such divestiture shall be made in the form of one or more going and viable businesses, each such business to be capable of engaging in substantially the same operations as those previously conducted by such business.

(D) The complete details of any contemplated plan of divestiture intended to implement the provisions of subsection (A) of this Section IV (including the identification of any person, or persons, or class of persons to whom the divested property is to be transferred and all outstanding contracts involving the properties to be divested to which ITT or any of its remaining subsidiaries is a party and not to be fully executed within two (2) years from the date of submission), shall be submitted to the plaintiff by ITT. Following the receipt of any such plan, plaintiff shall have thirty (30) days in which to object thereto by written notice to ITT. If plaintiff does not so object to the proposed plan, the plan may be consummated, but if objection is so made, the proposed divestiture shall not be consummated until ITT obtains judicial approval of the plan or until the plaintiff withdraws its objection; provided, however, (1) that in the case of a plan which provides for a pro rata distribution to security holders of ITT, or an exchange with security holders of ITT or any of its subsidiaries, or a public offering not involving a prior understanding or commitment to sell a portion of the securities to any predetermined purchaser (other than an underwriter or selling dealer for the purpose of resale to the general public), prior approval of the plaintiff need not be obtained and the plan may be consummated upon the termination of the thirty (30) day period, so long as the plan prohibits any person known by ITT to own or control beneficially more than one percent (1%) of the voting securities (including securities convertible into voting securities) of ITT from receiving any of the equity interest being divested until he has disposed of his voting securities (including securities convertible into voting securities) of ITT in excess of one percent (1%) thereof, and (2) that in the case of a plan as to which the plaintiff objects, the time period set forth in subsection (A) of this Section IV within which divestiture must be accomplished shall, unless the Court orders otherwise upon application of the plaintiff, be tolled during the pendency of any proceeding under this Final Judgment relating to the approval of a proposed plan of divestiture.

(E) If the divestiture requirements of subsection (A) of this Section IV have not been met within three (3) years from the date of entry of this Final Judgment, ITT shall, unless the Court shall on application by ITT otherwise direct, place in the control of a trustee, promptly after his appointment by this Court, upon application of the plaintiff, at the cost and expense of ITT, all of ITT's then undivested interest in Hartford, or alternatively all of ITT's then undivested interest in Levitt, Avis and Hamilton Life, vesting in the trustee full authority to manage and to dispose of such interests subject to Court supervision after hearing the parties hereto on any issue presented;

(F) Until the divestiture required by this Final Judgment is accomplished ITT shall take no action which knowingly impairs the viability of any of the businesses to be divested or ITT's ability to accomplish such divestiture, and, specifically, shall not cause or permit any of the following as to any company remaining to be divested, except upon consent of the plaintiff:

(1) The payment of any dividends by Hartford, Levitt, Avis or Hamilton Life except out of current earnings, but this restriction shall not prohibit the payment of dividends which are not in excess of the per share rate of the last dividend declaration prior to August 1, 1971;

(2) Any disposition of any of the assets of Hartford, Levitt, Avis or Hamilton Life, other than transactions in the ordinary course of business;

(3) The encumbrance of any of the assets of Hartford, Levitt, Avis or Hamilton Life to secure the indebtedness of any other of them or of ITT or of any other subsidiary of ITT.

V.

(A) ITT is enjoined and restrained, without first obtaining the consent of the plaintiff or approval of this Court upon ITT's establishing by a preponderance of the evidence that the acquisition will not lessen competition or tend to create a monopoly in any line of commerce in any section of the country

(1) From acquiring one percent (1%) or more of the voting securities in any domestic company the assets of which are recorded on the books of such company (net of related valuation reserves recorded on such books) in an amount in excess of One Hundred Million Dollars ($100,000,000), or from

acquiring from any one domestic person or group of persons under common control tangible or intangible assets or good will recorded on the books thereof (net of related valuation reserves recorded on such books) in an amount in excess of One Hundred Million Dollars ($100,000,000);

(2) From acquiring one percent (1%) or more of the voting securities in any domestic company which in the calendar year prior to said acquisition had total sales in an amount in excess of Twenty-five Million Dollars ($25,000,000) and had in said year in any section of the country in excess of fifteen percent (15%) of total sales in any line of commerce in which total sales in said section of the country exceeded One Hundred Million Dollars ($100,000,000) and in which any four (4) companies had combined sales in excess of fifty percent (50%) of total sales in said section of the country, or from acquiring any substantial proportion of the assets of any such company used in such line of commerce in such section of the country;

(3) From acquiring one percent (1%) or more of the voting securities in any domestic company engaged in the manufacture, fabrication, installation or sale of automatic sprinkler devices or systems, or any of the capital assets of any such company for use in such activities;

(4) From acquiring one percent (1%) or more of the voting securities in any domestic insurance

company with insurance assets in excess of Ten Million Dollars ($10,000,000), or any of the capital assets of any such company for use in the business of insurance; and

(5) From acquiring, except as contemplated by Section IV(B) of this Final Judgment or upon consent of the plaintiff, any substantial interest in any property to be divested pursuant to Section IV of this Final Judgment, or any interest in a person who acquires any property to be divested pursuant to Section IV of this Final Judgment so long as such person retains such property.

(B) The prohibitions contained in parts (1)-(4) of subsection (A) of this Section V shall not apply (1) to transactions by ITT in the regular course of its business of investing in securities (whether through Hartford or otherwise) where the acquisition of securities of any corporation covered by the provisions of said parts (1)-(4) is made solely for purposes of investment and the percentage acquired does not exceed five percent (5%), or (2) to acquisitions by ITT of securities or assets in any subsidiary of ITT.

(C) The prohibitions contained in subsection (A) of this Section V shall no longer be in effect if and when ITT divests itself of all of its interest in Hartford.

VI.

Simultaneously with the consummation of the divestiture of a company pursuant to Section IV of this Final Judgment, ITT shall take such steps as may be necessary to remove from the position as director or officer of such company any person holding any position with ITT, unless plaintiff otherwise consents.

VII.

Defendants are enjoined and restrained, so long as ITT owns any interest in Hartford, from discriminating in favor of each other in the purchase or sale of any of ITT's insurance requirements.

VIII.

Defendants are enjoined and restrained, so long as ITT owns any interest in the Fire Protection Division of Grinnell Corporation, from using the position and influence of Hartford to assist the Fire Protection Division of Grinnell Corporation in securing sales of its products.

IX.

Defendants are enjoined and restrained, for a period of ten (10) years from the entry of this Final Judgment in connection with any purchases or sales in the interstate or foreign commerce of the United States, from:

(A) Purchasing, or entering into or adhering to any contract, agreement or understanding to purchase, products, goods or services on the condition or understanding that purchases by defendants or either of them from any actual or potential supplier will be based on or conditioned upon, in whole or in part, such actual or potential supplier's purchases from such defendants;

(B) Selling, or entering into or adhering to any contract, agreement or understanding to sell, products, goods or services to any actual or potential customer on the condition or understanding that purchases of products, goods or services by defendants or either of them from such customer will be based on or conditioned upon, in whole or in part, such actual or potential customer's purchases from such defendants;

(C) Communicating to either defendant's actual or potential suppliers or contractors that:

(1) In purchasing products, goods or services, such defendant will give preference to any supplier or contractor based on or conditioned upon, in whole or in part, the fact, volume or dollar amount of such supplier's or contractor's purchases from such defendant;

(2) In compiling bidder lists or in awarding contracts for projects involving capital expenditures by either defendant, preference will be given to any supplier or contractor based on or conditioned upon, in whole or in part, the fact, volume or dollar amount of such contractor's or supplier's purchases from either defendant;

(3) Either defendant is entitled to receive contracts or orders for products, goods or services from any supplier or contractor based on or conditioned upon, in whole or in part, either defendant's purchases from such supplier or contractor, or based on or conditioned upon, in whole or in part, any contract award made by either defendant to any such supplier or contractor;

(D) Comparing or exchanging statistical data with any actual or potential supplier or contractor to ascertain, develop, facilitate or further any relationship between purchases by either defendant from such supplier or contractor and sales by either defendant to such supplier or contractor;

(E) Engaging in the practice of discussing with any actual or potential supplier or contractor the relationship between purchases or contract awards by either defendant involving such supplier or contractor, and sales by either defendant to such supplier or contractor;

(F) Preparing or maintaining lists or statistical compilations which compare the volume of, or dollar amount of, purchases by either defendant from suppliers or contractors, or the fact of or dollar value of contracts awarded by either defendant to such contractors, with purchases by such suppliers from either defendant or contracts awarded to either defendant by such contractors;

(G) Issuing, to personnel having responsibilities for purchasing or responsibilities for awarding contracts, lists which identify customers and the magnitude of their purchases from either defendant or which identify companies and the dollar value of contracts such companies have awarded to either defendant or which specify or recommend that purchases be made from any such customers or that contracts be awarded to such companies;

(H) Referring compilations of bids received for contracts for projects involving capital expenditures by either defendant to any department or unit of either defendant having sales responsibilities for decision or recommendation by such department or unit as to the identity of the firm or firms to which contracts for such projects should be awarded;

(I) Agreeing with or suggesting to particular suppliers or contractors that such suppliers or contractors purchase from certain customers of one or both defendants in order to reciprocate for purchases made by either defendant from such suppliers or contractors;

(J) Agreeing with or suggesting to particular suppliers or contractors that such suppliers or contractors will attempt to persuade other companies to buy from one or both defendants in order to reciprocate for purchases made by either defendant from such suppliers or contractors.

X.

Each defendant is ordered and directed to:

(A) Refrain from continuing or establishing any office or position the activities, programs or objectives of which are to promote trade relations involving reciprocal purchasing policies, arrangements, or practices in the interstate or foreign commerce of the United States;

(B) Withdraw from all personnel with sales responsibilities in the interstate or foreign commerce of the United States any lists or compilations which may be in existence described in subsections (F) and (H) of Section IX above, and withdraw from all personnel with purchasing or contracting responsibilities in the interstate or foreign commerce of the United States any lists or compilations which may be in existence described in subsections (F) and (G) of Section IX above;

(C) Refrain from being a member of and prohibit its officers and employees from belonging to, or participating in the activities of, or contributing anything of value to, any association whose activities, programs or objectives are in whole or in part to promote trade relations involving reciprocal purchasing policies, arrangements or practices in the interstate or foreign commerce of the United States;

(D) Issue within sixty (60) days to each of its officers and employees having sales, purchasing or contracting responsibilities in the interstate or foreign commerce of the United States a policy directive stating that:

(1) All officers and employees are prohibited from purchasing or entering into any contract, agreement or understanding to purchase products, goods or services from any actual or potential supplier on the condition or understanding that such purchases from such supplier or potential supplier will be based on or conditioned upon, in whole or in part, or influenced by, such supplier's purchases from either defendant;

(2) All officers and employees are prohibited from selling, or entering into any contract, agreement or understanding to sell products, goods or services to any actual or potential customer on the condition or understanding that either defendant's purchases of products, goods or services from such actual or potential customer will be based on or conditioned upon, in whole or in part, or influenced by either defendant's past or future sales to such customer;

(3) All officers and employees are prohibited from (i) soliciting bids from any contractor or supplier for any contract for a project involving capital expenditures by either defendant, and (ii) awarding contracts for such projects to any such contractor or supplier, on the condition or understanding that such solicitations or such awards by a defendant will be based on or conditioned upon, in whole or in part, or influenced by, such contractor's or supplier's purchases from either defendant or the dollar value of contracts awarded by such contractor or supplier to either defendant;

(4) Violation of the policy directive may subject any offending officer or employee to dismissal from his employment and to liability for violation of this Final Judgment;

(E) Furnish to each domestic supplier from which any ITT operating unit in the United States purchased Twenty Thousand Dollars ($20,000) or more in products, goods or services during 1970, and to each domestic purchaser to which any ITT operating unit in the United States other than Hartford sold Twenty Thousand Dollars ($20,000) or more in products, goods or services during 1970, and to each purchaser of insurance whose account was handled during 1970 by Hartford's Special Accounts Insurance Department, a statement accurately and completely describing the provisions contained in Sections IX and X of this Final Judgment, or a copy thereof, and advise each such supplier and customer, by written notice satisfactory to the Antitrust Division of the United States Department of Justice, that:

(1) All officers and employees are prohibited from purchasing or entering into any contract, agreement or understanding to purchase, products, goods or services from any actual or potential supplier on the condition or understanding that such purchases from such supplier or potential supplier will be based or or conditioned upon, in whole or in part, or influenced by, such supplier's purchases from either defendant;

(2) All officers and employees are prohibited from selling, or entering into any contract, agreement or understanding to sell, products, goods or services to any actual or potential customer on the condition or understanding that either defendant's purchases of products, goods or services from such actual or potential customer will be based on or conditioned upon, in whole or in part, or influenced by, either defendant's past or future sales to such customer;

(3) All officers and employees are prohibited from (i) soliciting bids from any contractor or supplier for any contract for a project involving capital expenditures by either defendant, and (ii) awarding contracts for such projects to any such contractor or supplier, upon the condition or understanding that such solicitations or such awards by either defendant will be based on or conditioned upon, in whole or in part, or influenced by, such contractor's or supplier's purchases from either defendant or the dollar value of contracts awarded by such contractor or supplier to either defendant;

(4) The provisions of Sections IX and X of this Final Judgment apply with full force and effect to all insurance activities of defendants, as well as to all other financial and commercial transactions of defendants.

XI.

Nothing in Sections IX or X of this Final Judgment shall prohibit either defendant:

(A) From entering into arrangements for the conversion of its products or goods into other forms thereof for its own use or resale or from converting products or goods for others;

(B) From contracting for construction work or for the manufacture or installation of equipment and facilities for its own use and not for resale on the condition that its products, goods or services are to be used in the performance of such contracts; or

(C) From complying with any requirement or request of a state or federal agency concerning the preparation, maintenance, or distribution of any compilation or list.

XII.

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, each defendant shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to such defendant's principal office, subject to any legally recognized privilege:

(1) Access during the office hours of such defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, such defendant shall submit such reports in writing, with respect to the matters contained in this Final Judgment, as may from time to time be requested.

(C) No information obtained by the means provided in this Section XII of this Final Judgment shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XIII.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, modification, or termination of any of the applicable provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XIV.

This Final Judgment shall remain in full force and effect for ten (10) years, and no longer, from the date of entry hereof except as to any provision herein for which a shorter term is specified therein.

M. Joseph Blumenfeld
United States District Judge

Dated: Sept. 24, 1971.

December 1, 1975

MEMORANDUM

TO: Richard Joyce Smith, Trustee

FROM: Raymond S. Troubh
Ora C. Roehl

RE: AVIS, INC. - Plan of Liquidation of Trustee's Avis Holdings

In his "TRUSTEE'S SECOND REPORT PURSUANT TO TRUSTEE ORDER NO. 1" dated March 3, 1975, the Trustee presented a broad program to the Court (supported by our memoranda of February 3 and February 18, 1975) for the divestiture of his Avis shares. The program, which was designed to take into account the best interests of the Avis shareholders, Avis's financial condition and its continued viability, was approved by the Court.

I. BACKGROUND

The principal feature of the plan was the infusion of new capital into the company through the purchase of 1,487,000 shares of Avis common stock by ITT at a cost of $17,295,000. The agreement reached by the Trustee with ITT was in our opinion the only possible way that needed equity capital could be raised by Avis early in 1975 on terms equitable to Avis. It was felt that the new capital would solve Avis's immediate financial problems and give Avis management time to demonstrate its ability to operate Avis as an independent company.

As part of the agreement by ITT to purchase the additional stock of Avis the Trustee agreed that he would not, during the next 12 months, unless there were a dramatic turn for the worse in the fortunes of Avis, recommend a private sale of the Avis shares held by him at less than $11.63 per share (the cost of the additional shares to ITT). This period is considered to expire on January 15, 1976.

We also noted in our February 1975 memoranda certain factors which impelled us to recommend against any hasty sale or other divestiture of the Trustee's shares until a "shakedown period" had elapsed giving Avis management an opportunity to manage the company without the intrusion of peripheral clouds such as merger examinations, court hearings and other non-productive and non-related impediments. Then as improvement in Avis's operations would hopefully become evident to the financial community we felt that a much better climate would emerge for the disposition of the Avis stock to the substantial benefit of Avis, its public shareholders and the general public who use and require rent-a-car services.

We listed the following factors which we believed would contribute to a significant improvement in Avis operations during the next twelve months:

"1. A substantial decline in interest rates.

"2. An improvement in Avis's Canadian operations.

"3. The consolidation and streamlining of Avis truck operations.

"4. The realization of economies under the Wizard System.

"5. The continuation of management programs aimed at cash conservation and overall operating efficiencies.

"6. The gradual improvement in general economic conditions."

Of the six items enumerated above, we are pleased to report that five have occurred and the remaining one (improvement in Canadian operations), while disappointingly slow, is pointing in the right direction.

II. PRESENT SITUATION

As financial advisers to the Trustee, we have been in constant touch with senior Avis management both on the operational and financial side of the business. We have held numerous meetings with the management and with the Trustee and with other directors of Avis in order to fully inform ourselves as to the present Avis condition and its future prospects. We wish to report to the Trustee that the Avis management has been totally cooperative with us and extremely helpful in providing all the information we have requested.

The Avis top management has, in our opinion, been strengthened substantially, not only by good additions to the staff but also by promotions and reassignments within the company. Certain areas of concern such as controls, management information systems, accounts receivable and bad debt reserves (particularly in the foreign area), and foreign exchange problems, have been attacked with agility and determination, and while not yet totally solved, at least the problems have been identified and exposed. One ingredient of good management is to eliminate "surprises". Investors demand certainty and credibility; "surprises" destroy both of these desirable characteristics. Hopefully, and we believe realistically, Avis management is on top of its problems.

From the financial point of view, Avis has done extremely well so far in 1975 and it appears the momentum not only is continuing but may well be stepped up. We believe the third quarter figures, recently published, were well received and the full year's results when they appear will surpass the expectations of what even the most optimistic of Wall Street observers looked for at the beginning of the year.

Comparative figures for the nine months ended September 30, 1975, show a strength and a rebound from last year's results that is surprising in view of the rather slow emergence of the economy (domestic and foreign) from the recent recession. (See Exhibit 1 attached hereto.) The figures demonstrate that Avis management is approaching the control, discipline and flexibility to become and remain an independent, viable public company.

The after tax (and after preferred dividend) earnings of $9,338,000 or $1.31 per share (on the basis of 6,985,886 weighted average shares outstanding) were achieved despite a loss of $2,363,000 or $.34 per share in foreign exchange translations and despite the failure to control Canadian losses which cost another

$1,512,000 pretax. As we indicated above, the Canadian situation is coming under control but much more slowly than Avis management had anticipated.

We are confident that barring economic and monetary events beyond Avis management (or any other management) control, the "Avis numbers" reflect momentum and progress which will continue.

Overall, the plans for operating and balance sheet improvement which Avis management outlined to us earlier in the year have been implemented and the hoped for results are coming along on schedule. In addition, Avis has a distinguished Board of Directors composed of men experienced in conducting the affairs of large public companies and versed in the financial and other problems that confront such companies. The Finance Committee of the Board is especially strong and competent. ✓

We believe we have obtained sufficient insight as to the business of Avis so as to be able to recommend to the Trustee that the time has come to take action on the next step in his divestiture program.

III. PROPOSAL AND DISCUSSION

We have previously reviewed with the Trustee various methods of divestiture of his shares. We believe that, for reasons stated below, the next step in the divestiture plan which would be most beneficial to Avis and to its shareholders would be the sale by the Trustee, in early 1976, of around 1,000,000 shares of stock.

This would reduce the Trustee's holdings to 3,587,000 shares or 47.9% of the outstanding shares.

Avis has outstanding 7,487,000 shares of common stock, of which the Trustee now holds in trust a total of 4,587,000 shares, constituting 61% of those outstanding. According to the latest records of the company, there are no holders of record holding more than 5% of the stock. There are about 2,100 holders of record holding the remaining 2,900,000 shares of stock not held by the Trustee. No significant institutional holdings appear on the company records. The shares are listed on the New York Stock Exchange and have recently been quoted around 7 per share. The range from January 1, 1975 to date has been 9 7/8 to 5 1/8.

On November 12, 1975, a non-registered secondary offering of 268,100 Avis shares was made on the New York Stock Exchange at the price of the last trade on that day or 6 7/8. Dillon, Read & Co., who managed the sale, has reported that indications of interest exceeded 500,000 shares and that after the offering the bid price for the stock increased by 3/8 to close at 7 1/4.

We believe that Avis is a quality company, that its earnings will improve and become less erratic, and that its shares should be reintroduced to the public in a secondary offering carrying the imprimateur of a distinguished major underwriting house. To this end, we have canvassed a number of leading firms and each has indicated an interest in managing such an issue.

The investment firms with whom we have had discussions and who have submitted general comments are:

Dillon, Read & Co., Inc.
Goldman, Sachs & Co.
Kidder, Peabody & Co., Inc.
Merrill Lynch, Pierce, Fenner & Smith, Inc.
Paine, Webber, Jackson & Curtis Incorporated
White, Weld & Co. Incorporated

Each of the firms is considered a "major" in underwriting parlance and each has a successful record of managing equity underwritings. Each such firm indicated that, assuming the stock market and business conditions continued in their present state, 1,000,000 shares or somewhat more if that were desirable could be readily distributed early in 1976 shortly after the issuance of Avis's annual report for 1975.

Each also indicated a desire to work with the company on its financial plans for the future.

As we have mentioned before, Avis needs a master financial plan and the company is giving this most important question a great deal of top management attention. The Trustee's final divestiture plans will need to be to a great extent related to Avis's own plans for its independent financial future.

We visualize this first distribution of Trustee's shares as one initial step in a program to develop and then make known to the investing public Avis's 1976-1977 financial and operating plans. At this time we do not recommend that more than 1,000,000 to 1,500,000 shares be distributed by the Trustee as we are still concerned with the specter of outsiders obtaining control of the company on a basis that would not be fair to Avis and its shareholders and which might not permit time for the company's management to have Avis emerge from the final divestiture of the Trustee's stock as a strong, independent force in the rental car business, which in our opinion is the objective that should be sought by all parties to the divestiture proceedings.

While the company will in the future need to raise additional equity capital, yet other phases of the company's financial plans presently have a higher priority. The company's current equity position is relatively comfortable but not at all luxurious. At the present time the following financial planning questions will be receiving management attention. Of course, fundamental to everything is the need for the company to continue its earnings improvement.

1. As Avis is in a capital intensive industry, it is most important that efforts be made to lessen its dependence on bank and other short term financing and the restrictive provisions inherent in such loan agreements. The possibility of selling long term debt (over 10 years) either on a private placement basis in the U.S.A. or abroad is being considered as well as the sale of intermediate debentures (5 years to 10 years maturity).

2. Avis at one time was active in the commercial paper market but this market is closed to it today. If the

Avis business continues to improve and if it is able to increase its equity base and obtain longer term debt financing, it may again have a rating of A2/P2 and regain access to this least expensive means of raising short term capital, a source now open to its strongest competitor, Hertz.

3. Another financing area under review is the equity-linked means of raising capital -- convertible bonds, convertible preferreds, other types of preferred stock financing and warrants.

4. And -- finally the raising of new equity capital through the sale of new common stock. This may best be planned to coincide with the final divestiture of the Trustee's common stock holdings -- sometime in 1977 or even early 1978.

The ability of Avis to raise capital on a competitive basis with the strongest factors in its industry is critical to the company and the contemplated first divestiture by the Trustee must, as we have said before, be programmed so as not to interfere with Avis capital raising goals and abilities.

It would be expected that the underwriter selected to manage the proposed offering would promptly start to outline and prepare a prospectus in cooperation with the company, the Trustee and the associated legal counsel. Our current thinking visualizes an announcement of the public offering around March 1 followed by extensive meetings between Avis management and prospective underwriters and institutional purchasers with the public offering taking place in early 1976.

Because of the special nature of the sale of the Trustee's stock there are undoubtedly a number of special questions, such as whether or not the issue is a "new issue" and thus not eligible for margin purchases, which must be determined and answered.

Another question that will require an early answer is the question of reinstituting a common stock dividend. Some prospective managing underwriters feel that a dividend rate of 5¢ or 10¢ quarterly should now be established to help the sale of the stock. Our initial reaction is that the question of a dividend might better await consideration in mid-1976. Then if Avis's fortunes continue to improve, a dividend policy could be established and the payment of a dividend at that time would be another indication of Avis's progress.

We have discussed in our previous memoranda the importance to Avis of good financial public relations. The company these past months has concentrated on improving its own internal financial operations and in bettering its relations with its principal lenders. The managing underwriters of the proposed offering will want to arrange for meetings with investors in various key cities in the U.S.A. and perhaps also in certain key cities in Europe. Such meetings will give the company the opportunity not only to discuss its current operations but to also outline its financial plans for the future. In addition, each of the prospective managing underwriters agrees with our view that Avis management should commence a program of analyst meetings and more complete financial public relations in order to reinterest Wall Street in the company and restore Avis's credibility.

There is naturally some concern about the effect that the "overhang" of the Trustee's remaining stock has and will have on the price of the Avis stock. There is no question that the Avis stock price has been under pressure because of the unknowns about what the Trustee may do with his shares. While the "overhang" will continue to be a factor, yet a better understanding of the company's operations and of the Trustee's future divestiture program should go a long way towards improving the climate.

It is our expectation that the market for Avis shares will improve after the initial offering because of the orderliness of the distribution and the certainty created in the minds of Avis employees and the investing public that it is the Trustee's firm intention that Avis be independent and that the market will not be disrupted by an abrupt or disorderly distribution. This plan will assure the utmost flexibility giving the Trustee an opportunity to take advantage of any unforeseen event. It will also reduce the Trustee's absolute majority control while, at the same time, protecting Avis for a time while it prepares for total independence. It will be up to the Avis management and Board of

Directors at that time to fashion future plans and chart Avis's future course.

It is, of course, most important that the first offering of the Trustee's shares not only be accomplished but that it be especially successful. This will require that detailed attention be given to the pricing of the issue, the commission structure, and also to the maintenance of a solid after market along with continuing follow-up research coverage and reports to investors. It is believed that support of both retail and institutional buyers will be vital to success of this issue.

One other divestiture question also must be kept in mind and that is the $5 million Avis Series A Preferred Stock which we understand is considered an ITT interest in Avis and which is also held by the Trustee for divestiture. (The dividend rate on the Preferred is 5.5% until July 1, 1977 and then becomes 1% below the prime rate charged by the Irving Trust Company. Beginning January 1, 1978, 2,500 shares of the Preferred are to be redeemed by the company annually.) The ultimate disposition of this security is another factor that requires consideration.

We have not yet finalized our recommendation as to the managing underwriters. We would expect to recommend a firm or firms which, of course, would be compatible with Avis's management views. It is our plan to meet with the Trustee during the week of December 8, 1975 and will then present our comments about the various potential underwriters so that an early selection can be made and work on the prospectus can go forward.

Our conclusion is that Avis is a viable corporate entity, fully capable of reemerging as an independent force in a large and important industry. The Trustee's sale of his shares in early 1976 in an orderly fashion as outlined above would be the divestiture approach most beneficial to Avis, its shareholders, its employees and other interested parties.

We believe public interest in the Avis shares is present and significant. As we have indicated, our recommendation that the Trustee undertake the initial divestiture of the Avis stock is based on the assumption that market and business conditions will, at the time of the proposed offering, be about as they are today. One major factor that might affect the offering time schedule would be an unexpected major increase in prime interest rates or similar economic upheaval.

In the meantime plans for the offering should commence with the understanding that the offering will only be made if conditions are favorable and that it may be postponed if financial markets or other conditions are unfavorable.

Raymond S. Troubh
Ora C. Roehl

EXHIBIT 1

INCOME STATEMENT
(9 Mos. Ended September 30)
(000's)

	1975	% of Sales	1974	% of Sales
Revenues	$298,600		$286,076	
Expenses:				
Direct Operating	153,759	51.5%	148,643	51.9%
Depreciation and Rental of Vehicles	63,548	21.3	66,823	23.4
Provision for Doubtful Accounts	7,698	2.5	6,308	2.2
Selling G. & A.	$ 37,491	12.6	$ 33,138	11.6
Interest	17,444	5.8	20,336	7.1
Total Expenses	$279,940	93.7%	$275,248	96.2%
Pre-tax Profit	18,660	6.3%	10,828	3.8%
Income Taxes	9,322		4,189	
Net Income	$ 9,338		$ 6,639	
Net Income Per Share after Preferred Stock Dividend	$ 1.31		$ 1.09	

BALANCE SHEET
September 30th
(000's)

	1975	1974
Assets		
Cash	$ 32,617	$ 38,608
Accounts Receivable, Net	73,553	72,396
Finance Lease Receivables	39,018	32,997
Vehicles (Net)	215,208	191,614
Other	81,816	79,587
Total Assets	$442,212	$415,202
Liabilities		
Vehicle Obligations and Other Debt	$220,896	$243,053
Other	$125,446	$100,595
Stockholder Equity	95,870	71,554
Stockholder Equity as % of Total Capital	30.3%	22.7%

December 15, 1976

MEMORANDUM

TO: RICHARD JOYCE SMITH, TRUSTEE

FROM: ORA C. ROEHL
RAYMOND S. TROUBH

We have acted as your financial advisors since the commencement of your Avis trusteeship and, as such, have consulted with you and your various associates, both legal and investment banking, in connection with numerous decisions made regarding the disposal of the Avis shares held by you.

The Trustee made his initial public sale of 1,250,000 Avis shares at $9.25 per share (less an underwriting fee of $.65 per share) on May 27, 1976. A group of 123 underwriters was managed by Goldman, Sachs & Co., Dillon, Read & Co., Inc., and Kidder Peabody & Co., Inc. Avis shares, listed on the New York Stock Exchange, during 1976 traded in the range of $7 1/2 to $13 1/8, and are currently quoted at around $11 per share.

This public distribution was made in keeping with a January 14, 1976 order of the United States District Court for the District of Connecticut which

"directs the Trustee to begin disposing

> of the shares of the Common Stock of Avis held by the Trustee by way of a series of public offerings beginning in the first half of 1976 and continuing from time to time thereafter at such intervals and in such amounts as the Trustee and his financial advisors shall find to be appropriate under all the circumstances and in the best interests of Avis and all its stockholders."

The May 27, 1976 prospectus further stated that:

> "the Trustee intends to dispose of the shares of Common Stock to be held by him after the sale of the shares offered hereby by means of additional underwritten public offerings from time to time. However, there can be no assurance that the Trustee might not determine to dispose of such shares by private sales or otherwise pursuant to further orders of the Court."

The decree of the Court also provides that 406,504 shares of the Avis common stock held by the Trustee, received through the conversion of $5,000,000 of Avis preferred stock held by ITT, should not be sold prior to December 31, 1977 at a price less than $12.30 a share, which was the book value of Avis common stock on December 31, 1975.

The Trustee presently holds 3,743,504 Avis shares, constituting approximately 47% of the outstanding Avis shares, having a total market value, at current quotations, of approximately $41 million.

Avis is enjoying a fine year and many Wall Street observers expect record earnings for 1976 and forecast higher earnings for 1977. The only serious problems encount[illegible]his year have been substantial foreign currency write-offs over which Avis had little or no control, and the disclosure of certain "questionable payments".

We have previously advised you that we believe the prudent course for you, as Trustee, to follow is to periodically sell Avis shares in the public market in underwritten offerings. We have felt this course of action would cause the least disruption of an orderly market in the shares, would be constructive from the point of view of Avis management, and generally would be in the best interests of Avis and its shareholders. We continue to believe that under current market, economic and monetary circumstances, and with due consideration for the operations of the company, a final single sale of all the Trustee's shares at one time would not be in the best interests of shareholders and would most likely not bring in full value for the shares.

We also recognize that there is some prevailing public opinion (represented recently by a comment in Barron's) that the market price of Avis shares has not risen to reflect its increased earnings because of the overhanging block held by the Trustee. However, we do not believe that it has been a major reason for Avis's less than spectacular market performance. We have always been aware of this problem but we feel that other factors that must be weighed in determining your distribution program are of overriding importance. A single sale of the entire Trustee holding at this time could only be done at an unacceptable discount from current market. We would also point out that the Trustee's shares are already outstanding and so are not a dilution factor in terms of earnings or possible dividend resumption.

We have commented before on your expressed obligation to promote a viable and independent Avis. To preserve that independence, we believe that Avis should take steps to strengthen its charter and by-law provisions against hostile takeovers. This is not uncommon in American industry today and dozens of cases can be cited of companies creating staggered boards, providing for cumulative voting and requiring large percentage votes for merger that the Board does not approve. Avis has an outstanding outside working Board of Directors which has worked successfully with you to give Avis a rebirth. Adoption of the suggested charter reforms will enhance these efforts, still allow them to consider bona fide offers that they deem worthy of consideration, and, in our judgment, redound to the ultimate benefit of shareholders.

Thus, as the Trustee gradually withdraws, the Company will be in a position to protect and defend itself against offers which are not deemed by the then management to be in the best interests of all the stockholders. These steps, it seems to us, are consistent with the Trustee's philosophy of disposing of the shares in a fashion deemed by him to be in the best interests of Avis and all its stockholders.

We believe that a disposition of the Avis shares through an underwritten public sale during the late spring or summer of 1977, in an amount representing approximately one-half of the Trustee's present holdings, subsequent to the release of audited Avis financial statements and after the annual meeting, would be appropriate, assuming favorable economic and market conditions and the continuation of present trends in the company. We also believe that the performance of the original underwriting syndicate and its managers was perfectly satisfactory and should be retained.

While we recognize that financial matters such as dividends and capital formation are the particular responsibility of the Board, and not the Trustee, we nevertheless feel compelled to comment on these two points. Recalling the very tight money bind in which Avis found itself two years ago, we urge that Avis take advantage of present easier monetary conditions and issue approximately $50 million of long term debt as soon as possible. We do not believe opportunities like the present will prevail for too long a time.

We also believe that Avis should reinstitute the payment of dividends. Its earnings certainly warrant a resumption and such a move would demonstrate confidence on the directors' part that the improvement in Avis operations are likely to continue. We believe investors are now income conscious to a far greater degree than in the past and that a program of steadily increased dividends will have a positive impact upon the market for Avis shares.

We recognize that you may, from time to time, receive offers for all or part of your Avis holdings. Some of these offers may include similar offers to the public shareholders. While we shall continue to examine each such offer on its merits, we believe that, absent extraordinary circumstances, you should maintain your present course of action.

As the year 1977 unfolds, it is our intention to continue to monitor the operations of the Company and review its future financial projections and objectives so that we may suggest to you a schedule and plan outlining the steps that might be considered subsequently for the ultimate disposition of the remaining Avis shares then held by the Trustee.

ORA C. ROEHL
RAYMOND S. TROUBH

FILED
JAN 6 9 20 AM '75
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

MICROFILM
JAN 8 1975
NEW HAVEN

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA
Plaintiff

v.

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION AND THE HARTFORD FIRE INSURANCE COMPANY
Defendants

and

AVIS, INC.
Defendant Intervenor

CIVIL NO. 13,320

TRUSTEE ORDER NO. 1

1) The Final Judgment of this court entered September 24, 1971, and consented to by the parties having ordered and directed, inter alia, that the defendant, International Telephone and Telegraph Corp. (ITT), divest within three years from the date of said judgment all of its interest, direct and indirect, in the Hartford Fire Insurance Co. (Hartford) or in the alternative all of its interest in ITT Avis, Inc. (Avis), ITT Levitt and Sons, Inc. (Levitt), ITT Hamilton Life Insurance Co. and ITT Life Insurance Co. of New York (Hamilton Life), and their subsidiaries, and

2) Having ordered and decreed that if such divestiture were not carried out within three years the court should place in the control of a trustee named and approved by the court the then undivested interest of ITT in Hartford or in the

alternative in Avis, Levitt, and Hamilton Life, all as set out in Section IV(E) of said decree, and

3) The court after hearing finding that ITT has not met the divestiture requirements of said Section IV(E), and

4) Finding that to carry out and effectuate said decree it is necessary, inter alia, to appoint in accordance with said Section IV(E) a trustee of all ITT's undivested interest in Avis and its subsidiaries,

I. IT IS ORDERED that Richard Joyce Smith of Southport, Connecticut, (the Trustee) be and hereby is appointed to manage and dispose of ITT's undivested interest in Avis and its subsidiaries (the Trust Property) under the supervision of this court and subject to the provisions of this Order.

II. ITT is hereby ordered and directed to irrevocably convey the Trust Property to the Trustee promptly upon receipt of this Order and to effect the resignation of all ITT personnel from the board of directors of Avis. ITT is ordered to execute and deliver to the Trustee or his delegates any instruments deemed advisable by the Trustee to effect the purposes of this Order, and ITT shall instruct its officers, employees, accountants, and legal counsel to cooperate with the Trustee in performing his duties hereunder.

III. The Trustee shall immediately consider a possible disposition of the Trust Property by way of an exchange offer of the Trust Property for outstanding securities of ITT and shall report his conclusions on the feasibility of such a plan to the court within 30 days. Contemporaneously, the Trustee shall also study such other alternative methods of disposition of the Trust Property as he deems fit, taking into account the present financial condition of Avis and its continued viability, and shall report his recommendations for a plan of disposition to the court within 60 days.

IV(A). Until the consummation of a plan of divestiture hereunder the Trustee shall vote the Avis stock held by him at his discretion, having in mind the best interests of the shareholders of Avis in their capacity as such.

IV(B). To carry out the duties imposed upon him by this Order the Trustee, without regard to any legal restriction that might otherwise be applicable, shall be entitled:

> a. To act in any jurisdiction without giving bond or other security and without making any periodic accounting to ensure the faithful performance of fiduciary obligations.
>
> b. To employ any persons, firms, or corporations as depositaries, custodians, investment counsel, brokers, accountants, attorneys, experts, and agents; to rely upon their conduct or advice; and to pay them reasonable compensation.

c. To rely, in acting hereunder, upon any letter, notice, or other paper and upon any telephone, telegraph, or other message if believed to be genuine and to be signed, sealed, acknowledged, presented, sent, or given by or on behalf of the proper person, firm, or corporation, without incurring liability for any action or inaction based thereon.

d. To use his best judgment in exercising the powers, rights, and discretions conferred or in performing the duties imposed hereby or by law and, in order to feel free in doing so, to be exempt from personal liability, to the maximum extent permitted by law, for any action taken or omitted in good faith.

e. To acquire and administer any property, if acceptable, which ITT or any other person may add to the Trust hereunder.

f. To continue to have and exercise, after the termination in whole or in part of the Trust hereunder and until the final distribution of the property thereof, all powers, rights, and discretions conferred hereby or by law during the existence of such Trust.

IV(C). To the extent not inconsistent with or covered by this Order or any future Order of the court, the Trust to be created by this Order shall be construed and regulated by the laws of the State of New York.

V. Upon application to the court from time to time, the Trustee shall be entitled to fees as set by the court and paid by ITT. The Trustee shall also be entitled to reimbursement from ITT for reasonable expenses incurred by him as Trustee in carrying out his duties.

VI. Except as expressly provided herein, the terms of the Final Judgment in this matter remain in full force and effect. This court retains the power to issue such further orders as may be necessary to implement the purpose to be accomplished by this Order.

Dated at Hartford, Connecticut, this 6th day of January, 1975.

M. Joseph Blumenfeld

M. Joseph Blumenfeld
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED
MAR 3 10 00 AM '75
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

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UNITED STATES OF AMERICA, :
Plaintiff, :
-against- : Civil Action No. 13,320
INTERNATIONAL TELEPHONE and
TELEGRAPH CORPORATION and
THE HARTFORD FIRE INSURANCE
COMPANY, : Before The Honorable
M. Joseph Blumenfeld, D.J.
Defendants, :
and :
AVIS, INC., :
Defendant Intervenor. :

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Accepted and approved
Mar 3, 1975 M. Joseph Blumenfeld, U.S.D.J.

TRUSTEE'S SECOND REPORT
PURSUANT TO TRUSTEE ORDER NO. 1

To The Honorable M. Joseph Blumenfeld
United States District Judge
District of Connecticut

I. This second report, submitted to the Court pursuant to Trustee Order No. 1 dated January 6, 1975, presents for the Court's approval my recommendation of a course of action for the ultimate disposition of the shares of Avis, Inc. common stock which constitute the Trust Property. The program for divestiture which I recommend in my judgment, which is supported by the opinions of my independent financial advisors, is for the best interest of the shareholders of Avis as such and takes into account, as directed by Trustee Order No. 1, the present financial condition of Avis and its continued viability.

II. The program I recommend is as follows:

(a) Subject to the approval of this Court and the newly organized independent Board of Directors of Avis, Inc., International Telephone and Telegraph Corporation (ITT) shall promptly subscribe to and pay in cash $17,295,000 for 1,487,000 shares of newly issued shares of Avis common stock. Upon issuance of those shares to it, ITT shall promptly transfer them to me as Trustee to be added to the shares held by me and to be subject in all respects to the underlying Consent Decree and Trustee Order No. 1 of this Court. The undertaking of ITT to purchase the additional shares is stated in a letter dated February 21, 1975 addressed to me by Lyman C. Hamilton, Jr., Executive Vice President and Treasurer of ITT, a copy of which is attached to this report marked Exhibit A.

(b) In the absence of drastically changed conditions and circumstances in the interim, I shall not, unless so ordered by this Court, undertake a public sale or sales of the Avis shares in the Trust until after a full year's operation of Avis under the newly constituted Avis Board of Directors which is now completely independent of and beyond the control of ITT. That independent operation began with the first meeting of the newly constituted Avis Board held on January 15, 1975.

(c) In the absence of drastically changed conditions and circumstances, I shall not, unless so ordered by this Court, during the twelve-month period which began on January 15, 1975 accept any private offer for the Avis shares held in the Trust at a price less than $11.63 per share (the price per share to be paid by ITT for the newly issued Avis shares).

(d) Avis, Inc., upon receipt of payment by ITT for the newly issued shares shall immediately pay to ITT $500,000 on account of existing and outstanding loans by ITT and its affiliates totalling $1,500,000 as of the date of this report. Avis shall further agree as part of this program and settlement to pay the $1,000,000 balance of such loans by December 31, 1975 and shall also agree to use its best efforts to have Avis, Inc. substituted for ITT and ITT affiliates as guarantor of various loans by others to Avis affiliates amounting to approximately $1,550,000.

(e) ITT shall also pay consulting fees amounting to $100,000 due two investment banking firms retained by the Avis management to advise on previous proposals for the distribution of the Avis shares held by ITT.

(f) Upon payment by ITT as provided for under this program, Avis, Inc. shall execute to ITT a release from all obligations under a certain letter agreement dated August 13, 1974 relating to the purchase of Avis shares and from any further obligation to maintain the viability of Avis, Inc.

III. The ITT undertaking represents a settlement of a controversy over the obligations of ITT under an agreement with the Avis management made in August, 1974. It was the contention of Avis management that under such agreement ITT's obligation to purchase the additional Avis shares matured when the shares covered by Trustee Order No. 1 were transferred to the Trustee. ITT on the other hand contended that its obligation would not mature until I, as Trustee, disposed of the Trust Property by means other than a private sale of the Avis shares constituting the Trust Property.

It became clear to me that additional equity capital was urgently needed by Avis and that any delay in the settlement of this controversy could cause irreparable damage to Avis, Inc. and its stockholders. Yet a public sale of the Trust Property under present economic conditions, without first strengthening the financial condition of Avis, would be difficult if not impossible, except on so drastic a give away basis as to ruin the market for Avis stock with consequent serious loss to the public shareholders of Avis, and damage to the financial standing of Avis.

To choose the alternative of a private sale of the Trust Property at this time at current market values would be extremely disadvantageous for the existing public shareholders of Avis. To date the only offers received have been two tentative proposals for purchase of the Trust Property at six to seven dollars a share on a basis which forces minority shareholders out at the same price.

A third tentative proposal provides for the purchase by a private group of $25,000,000 principal amount of debentures of Avis due no earlier than 1987 and convertible over a period of five years into Avis Common Stock at $6.00 per share. The proposal is conditioned on the agreement by the Trustee to grant a five year option to Avis to purchase the Avis shares held by the Trustee at $6.00 per share plus one-half of the amount by which the market price at the time of exercise might exceed $6.00. The shares optioned would be used for employee stock purchase and bonus plans, and to the extent not so utilized, the remainder would be offered to shareholders. At the end of the option period I would have to sell any Avis shares that I then held to this group at the lower of $6.00 per share or the then market price. I do not consider such a proposal feasible for various reasons. It would involve too long a delay in termination of the Trust, too great a dilution of Avis common stock and an unfair advantage to the initiating group.

ITT began its divestiture program by selling 48 percent of the voting shares of Avis in two public offerings. The first, completed in June, 1972, disposed of 1,400,000 shares at a price of $38 a share to the purchasers. The second, completed in January, 1973, disposed of 1,500,000 shares at a price of $47 a share to the purchasers. Avis common stock was listed on the New York Stock Exchange on August 14, 1972. In connection with that listing ITT agreed with the Exchange that in the course of carrying out its complete divestiture of the Avis shares, ITT would use its best efforts to see that no individual, corporation or affiliated group would acquire in the aggregate more than ten percent of Avis's outstanding shares. Reference to this agreement was made in the Avis prospectus dated January 29, 1973. Whatever may have been the intention in making this disclosure it could reasonably have been taken by a purchaser as indicating an intention by ITT to distribute all of its Avis stock through public offerings. At the very least, it is reasonable to assume that a substantial number of those who bought Avis shares from ITT would not have done so if they had known the remaining majority block of that stock would be sold privately to a single person or company.

In my opinion, the use of private offers at this time to overcome Avis's need for additional equity capital would be unfair and inequitable to the minority stockholders of Avis and is not required to comply with the Consent Decree. As stated in my first report to the Court control of Avis by ITT has been effectively and permanently terminated. Public Avis stockholders should not be victimized by further punitive measures against ITT.

IV. My independent financial advisors, Raymond S. Troubh and Ora C. Roehl, have made an intensive study and analysis of Avis management, operations and financial condition. They have concluded, and have so advised me, that a substantial infusion of additional equity capital is urgently needed and that the purchase of additional shares by ITT under the program I recommend is the only possibility for such additional capital within the time required unless the Trust Property is immediately sold at a tremendous sacrifice. They have further advised me that on the basis of their discussions with representatives of Avis management they believe that the infusion of additional equity of $17,295,000 will resolve Avis's immediate financial needs and enable it to make a good beginning in its transformation from an ITT subsidiary to a profitable independent operating company.

In addition to the infusion of new capital, they list the following factors which they believe should contribute to a significant improvement in Avis operations during the next twelve months:

1. A substantial decline in interest rates.
2. An improvement in Avis' Canadian operations.
3. The consolidation and streamlining of Avis' truck operations.
4. The realization of economies under the Wizard System.
5. The continuation of management programs aimed at cash conservation and overall operating efficiencies.
6. The gradual improvement in general economic conditions.

They conclude that as Avis's immediate financial problems give promise of being resolved, the Avis management should now be given time to demonstrate its ability to operate Avis as an independent company and that as improvement in Avis's operations becomes evident in the financial community a much better climate should emerge for the disposition of the Avis stock to the substantial benefit of Avis and its public shareholders. It is therefore my opinion that with the infusion of the $17,295,000 in new capital, Avis, Inc. can operate as a viable entity independent of ITT. In my opinion the program I propose is the only way to secure an immediate infusion of needed capital for the independent operations of Avis. The program is designed to avoid protracted litigation at the expense of the company. Indeed such protracted litigation would compel me to sell the Trust Property privately without any bargaining power whatsoever, at great sacrifice to the public stockholders. Any settlement must be based upon a compromise. Unless there were to be a dramatic turn for the worse in the fortunes of Avis, I would not recommend a private sale at less than $11.63 per share because of the loss it would inflict upon those still holding the Avis stock they purchased in the public offerings.

Finally under the settlement, I retain complete flexibility to discharge my duties as Trustee. Should some unforeseen development occur which would require me as Trustee to come to the Court with some new proposal for disposition of the Trust Property I am free under the program to do so.

WHEREFORE, I respectfully request that the Court grant its approval of the program for disposition of the Trust Property as herein set forth.

Respectfully submitted,

Richard Joyce Smith
Trustee

Robert C. O'Brien
Peter D. Lowenstein
F. Timothy McNamara

Of Counsel

Dated: Hartford, Connecticut
March 3, 1975

World Headquarters

320 Park Avenue
New York N.Y. 10022
Telephone (212) 752-6000

Lyman C. Hamilton, Jr.
Executive Vice President and Treasurer

February 21, 1975

Richard Joyce Smith, Esq.
Whitman & Ransom
522 Fifth Avenue
New York, N. Y. 10036

Dear Mr. Smith:

As we have discussed, ITT is willing to resolve the outstanding questions relating to its letter to Avis, Inc., signed by me in its behalf and dated August 13, 1974. As you know, ITT has interpreted its obligation to subscribe and pay for to-be-issued shares of Avis Common Stock having an aggregate value of approximately $17,295,000, as becoming effective only when and if you as Trustee dispose of ITT's beneficial interest in Avis, held by you as Trustee, by other than a private sale.

You have now informed us that you intend to report to the Court that in your opinion Avis, Inc. can operate as an independent company with the infusion of the $17,295,000 in equity capital. You have also told us that it is your present intention to recommend to the Court that ITT's stock interest in Avis be distributed by public sale.

In view of this intent and notwithstanding ITT's interpretation of its agreement of August 13, 1974, ITT is now willing immediately to subscribe and pay for the "presently authorized but unissued shares of the Common Stock...of Avis, Inc...having an aggregate value of approximately $17,295,000..." at a purchase price per share calculated at the book value of Avis' issued and outstanding Common Stock at June 30, 1974, being $11.63 per share.

In addition, although ITT does not believe it is contractually or morally obligated to pay certain fees for consulting services rendered Avis management and its non-ITT affiliated Board members totalling $100,000, nonetheless, in the interests of resolving all outstanding disputes, ITT is willing to pay these fees.

EXHIBIT A

As to the $5 million in Avis Series A Preferred Stock purchased by ITT in 1974, ITT has always recognized that this constitutes an interest in Avis, Inc. held by ITT which must be divested pursuant to the 1971 Final Judgment. We believe, however, that the manner of divestiture of this preferred stock interest in Avis, Inc. can best be determined after you have established a method of final disposition of ITT's common stock interest in Avis.

The foregoing commitment to subscribe to and pay for additional Avis Common Stock will, of course, increase ITT's interest in Avis, Inc. ITT's commitment to subscribe to the additional Common Stock was made in reliance upon the following:

1. Your present intent, stated to us, that in your reports to the Federal District Court, District of Connecticut, you will recommend against the sale of ITT's interest in Avis Common Stock (including the newly subscribed to shares) by way of public distribution until after a period of approximately 12 months of Avis operations independent of ITT support, subject, of course, to your obligation as Trustee to consider all offers and options for the disposition of ITT's Avis stock which you may believe to be in the best interest of all the shareholders of Avis, Inc.; and

2. Your present intent, stated to us, that in your reports to the Court you will recommend against the acceptance of any private offer for ITT's interest in Avis Common Stock during a period of approximately the next 12 months at a price per share less than the book value of Avis Common Stock at June 30, 1974 being $11.63 per share, subject, of course, to your obligation as Trustee to consider all offers and options for the disposition of ITT's Avis stock which you may believe to be in the best interest of all the shareholders of Avis, Inc.

The subscription to the additional Avis Common Stock will be subject to the following conditions:

1. An agreement from Avis, Inc. that ITT's subscription to and payment for the additional $17,295,000 in Avis Common Stock and the payment of the $100,000 in consulting fees will fully satisfy and discharge any and all obligations of ITT to Avis by reason of the letter, dated August 13, 1974, and any other obligations, if any, of ITT to Avis, Inc. to support the viability of Avis, Inc.;

2. Your report to the Court that it is your understanding as Trustee that ITT's subscription to and payment for the additional $17,295,000 in Avis Common Stock and the payment of the $100,000 in consulting fees will fully satisfy and discharge any and all obligations of ITT to Avis by reason of the letter, dated August 13, 1974, and any other obligations, if any, of ITT to Avis, Inc. to support the viability of Avis, Inc.;

3. An agreement from Avis, Inc. to repay the existing loans by ITT and its affiliates to Avis and/or its affiliates amounting to approximately $1.5 million, of which $500,000 payable on demand will be offset against the $17,295,000, the subscription price to be paid to Avis, Inc. by ITT, and the remainder of approximately $1 million will be repaid as soon as Avis' loan agreements, as they exist or may be amended, permit, but in any event not later than December 31, 1975; and

4. An agreement from Avis, Inc. to offer as soon as Avis' loan agreements, as they exist or may be amended, permit, replacement with Avis guarantees of the existing guarantees by ITT and ITT affiliates of loans to Avis affiliates, aggregating approximately $1.55 million, and to use its best efforts to obtain promptly all necessary agreements from the lenders to permit such replacement.

I trust the foregoing will be acceptable as an amicable resolution of our controversy.

Very truly yours,

INTERNATIONAL TELEPHONE AND
TELEGRAPH CORPORATION

By

SIGNED

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----------------------------------X

UNITED STATES OF AMERICA, : Civil Action No. 13,320 J

Plaintiff, : Before The Honorable
M. Joseph Blumenfeld, D.J.

-against- :

INTERNATIONAL TELEPHONE and :
TELEGRAPH CORPORATION and
THE HARTFORD FIRE INSURANCE :
COMPANY,
:
Defendants,
:
and
:
AVIS, INC.
:
Defendant Intervenor
:
-----------------------------------X

FILED
JUN 10 10 23 AM '76
U.S. DISTRICT COURT
HARTFORD, CONN.

TRUSTEE'S THIRD REPORT PURSUANT TO TRUSTEE ORDER NO. 1

To The Honorable M. Joseph Blumenfeld
United States District Judge
District of Connecticut

I. This third report is submitted to the Court pursuant to Trustee Order No. 1, dated January 6, 1975, and Trustee Order No. 3, dated January 14, 1976, by which I was authorized to exchange the 50,000 shares of Cumulative Preferred Stock, Series A, $100 stated value, of Avis, Inc. which I held for shares of Avis Common Stock at the December 31, 1975 book value ($12.30 per share), and directed to begin the disposition of the Trust Property by way of a series of public offerings beginning in the first half of 1976.

II. On May 27, 1976, a public offering of 1,250,000 shares of Avis Common Stock, constituting a portion of the Trust Property, was made by me as Trustee through underwriters for whom Goldman, Sachs & Co., Dillon, Read & Co. Inc., and Kidder, Peabody & Co. Incorporated acted as representatives. The offering was made at $9.25 per share (the last reported sale price on the New York Stock Exchange on that day) less an underwriting discount of $.65 per share. The 50,000 shares of

Avis Preferred Stock were exchanged for 406,504 newly issued shares of Avis Common Stock on May 27, 1976, simultaneously with the offering of the shares of Avis Common Stock.

III. By virtue of these transactions the number of shares of Avis Common Stock held in trust has been reduced to 3,743,504 shares or approximately 47% of the total outstanding shares.

IV. The net proceeds of the public sale, amounting to $10,750,000, were received by me at the closing held June 3, 1976, and deposited in the trust account. On June 4, 1976, I remitted $10,250,000 to International Telephone and Telegraph Corporation.

V. At the present time there is $643,681.24 in cash in the trust account and a certificate of deposit of Morgan Guaranty Trust Company in the principal amount of $150,000 due July 19, 1976. As noted in the Registration Statement, it is estimated that the expenses incurred in connection with the public distribution to be borne by International Telephone and Telegraph Corporation will amount to approximately $389,000. Subject to approval of the Court, I have been authorized by International Telephone and Telegraph Corporation to pay such expenses on their behalf out of the cash balance remaining in the trust account.

VI. Within the next several weeks I shall submit to the Court an application for approval of payment of these expenses in the amounts actually incurred.

Respectfully submitted,

Joyce Smith

Richard Joyce Smith Trustee
Trustee

Dated: New York, New York
June 7, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AL HOLTZMAN, etc., :

Plaintiff, :

-against- : 76 Civ. 2729 (MEF)

JEROME CASTLE, et al., : **STIPULATION AND ORDER**

Defendants. :

---------------------------------------x

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for all parties as follows:

1. The time for defendants to move or answer with respect to the amended complaint and to serve papers in opposition to plaintiff's pending motion for class action certification is extended without date pending determination of the motion by defendant Penn-Dixie Industries, Inc. for consolidation of this action with Monheit v. Castle, et al., 76 Civ. 4009.

2. Notwithstanding paragraph 1 hereof, plaintiff may set a new time for defendants to move or answer with respect to the complaint and to serve papers in opposition to plaintiff's motion for class certification upon 15 days' written notice to the attorneys for defendants.

3. Except as specifically stated in this stipulation, nothing contained herein shall be to the prejudice of the rights of any of the parties.

Dated: New York, N.Y.
May 27, 1977

ARANOW BRODSKY BOHLINGER BENETAR & EINHORN

By ____________________
Attorneys for Defendant
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NICKERSON, KRAMER, LOWENSTEIN, NESSEN, KAMIN & SOLL

By_________________________________
Attorneys for Defendant
Arnold Y. Aronoff
919 Third Avenue
New York, N.Y. 10022

SO ORDERED:

____
U.S.D.J.

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6/1/77 1
PAUL, WEISS, RIFKIND, WHARTON & GARRISON
By J Young

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This ST day of June 1977
Whitman & Ransom
~~Att'ys. for~~ by K. Marte